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This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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## PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerged from the Mod Act are “***informed compliance***” and “***shared responsibility***,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of CBP, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s rights and responsibilities under CBP regulations and related laws. In addition, both the trade and CBP share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties or, in certain instances, referral for criminal enforcement.

The Office of Trade, Regulations and Rulings (RR) has been given a major role in meeting the informed compliance responsibilities of CBP. In order to provide information to the public, CBP has issued a series of informed compliance publications, on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the Border Security and Trade Compliance Division, RR, is entitled “The Passenger Vessel Services Act.” It provides guidance regarding the procedures that control the coastwise transportation of passengers between U.S. ports. It is part of a series of informed compliance publications advising the public of CBP regulations and procedures. We sincerely hope that this material, together with seminars and increased access to rulings of CBP, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under the CBP Regulations, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs maritime matters, for example, a maritime attorney or a vessel agent.

Comments and suggestions are welcomed and should be addressed to the Executive Director, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE, 10<sup>th</sup> Floor, Washington, D.C. 20229-1177.

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## INTRODUCTION

### Purpose

U.S. Customs and Border Protection (CBP), previously the U.S. Customs Service,<sup>1</sup> is responsible for enforcing and administering laws and regulations which set forth procedures to control and oversee vessels arriving in, and departing from, U.S. ports and the coastwise transportation of passengers between U.S. ports.

The purpose of this Informed Compliance Publication (ICP) is to identify the laws and regulations pertaining to the coastwise transportation of passengers, such that the trade community is informed of its legal obligations, and in order to maximize voluntary compliance with laws and regulations enforced by CBP.

### The Coastwise Laws: Passengers vs. Merchandise

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 law pertaining to the transportation of merchandise is known as the Jones Act, codified at 46 U.S.C. § 55102. The coastwise law pertaining to the transportation of passengers is known as the Passenger Vessel Services Act (PVSA), codified at 46 U.S.C. § 55103. This document will cover the key laws and regulations governing the transportation of passengers under the PVSA. This document is not applicable to the transportation of merchandise under the Jones Act. Please refer to the [Coastwise Trade: Merchandise](#) Informed Compliance Publication for information about the Jones Act.

Specifically, in this publication, CBP will summarize:

- U.S. Statutes and Regulations Enforced by CBP Pertaining to the PVSA
- Exceptions to the PVSA
- The Penalty for Violations of the PVSA
- PVSA Ruling Requests
- Waivers of the Navigation Laws

Note: CBP interpretive rulings are cited throughout this publication. You may access the rulings by clicking on the web link associated with the ruling number. Alternatively, you may visit the [Customs Rulings Online Search System](#) (CROSS) web link and enter the ruling number in the search bar.

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<sup>1</sup> The U.S. Customs Service was removed from the Department of the Treasury and became a component of the Department of Homeland Security (DHS), pursuant to the Homeland Security Act of 2002, Pub. L. 107-296 (Nov. 25, 2002), secs. 403, 411, and is now known as U.S. Customs and Border Protection (DHS Delegation Number 7010.1, of June 20, 2003).

## **APPLICABLE STATUTES**

### 46 U.S.C. § 55101(a) and (b)- Application of Coastwise Laws

The coastwise laws apply to the United States, including U.S. island territories and possessions. The coastwise laws do not apply to American Samoa, the Northern Mariana Islands, and the Virgin Islands.

### 46 U.S.C. § 55103- Transportation of Passengers

No vessel may transport passengers between ports or places in the United States to which the coastwise laws apply, either directly or via a foreign port, unless the vessel is: (1) wholly owned by U.S. citizens and (2) has a certificate of documentation with a coastwise endorsement or, if exempt from documentation, would otherwise be eligible.<sup>2</sup>

### 43 U.S.C. § 1333- Laws and Regulations Governing Lands

The laws of the United States extend to the subsoil and seabed of the Outer Continental Shelf; all artificial islands, installations, and other devices attached to the seabed “for the purpose of exploring, developing, or producing resources therefrom”; and any installation or device (other than a ship or vessel) used for the transportation of those resources.

### 46 U.S.C. § 55104- Transportation of Passengers between Puerto Rico and Other Ports in the United States

A vessel that is not qualified to engage in the coastwise trade may transport passengers between a port in Puerto Rico and another port in the United States until such a time as a finding is made that a qualified U.S.-flag passenger vessel is available for such service.

### 46 U.S.C. § 55121- Transportation of Merchandise and Passengers on Canadian Vessels

Until U.S. passenger service is established, Canadian passenger vessels holding permits issued by the Secretary of Homeland Security may transport passengers between the port of Rochester, New York, and the port of Alexandria Bay, New York. The prohibitions of the coastwise laws do not apply to the transportation on Canadian vessels of: “1) passengers between ports in southeastern Alaska; or 2) passengers or merchandise between Hyder, Alaska, and other points in southeastern Alaska or in the United States outside Alaska,” until the Secretary of Transportation determines that service by vessels of the United States is available to provide such transportation.

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<sup>2</sup> Formerly codified at 46 U.S.C. App. § 289. Recodified by Public Law 109-304, 120 Stat. 1632 (Oct. 6, 2006).

### 46 U.S.C. § 12103- General Eligibility Requirements

A certificate of documentation may be issued only to vessels that are wholly owned by a U.S. citizen, the U.S. government, a state government, and/or an eligible entity, partnership, or corporation; are at least five net tons; and are not documented under the laws of a foreign country.

### 46 U.S.C. § 12112- Coastwise Endorsement

A coastwise endorsement may be issued for a vessel that meets the criteria set forth in 46 U.S.C. § 12103, was built in the United States (or if not built in the United States, was captured in war by U.S. citizens and lawfully condemned as prize, was forfeited for a breach of U.S. laws, or qualifies as a wrecked vessel), and otherwise qualifies to engage in the coastwise trade. A vessel issued a coastwise endorsement may engage in the coastwise trade.

### 46 U.S.C. § 501- Waiver of Navigation and Vessel-Inspection Laws

Under 46 U.S.C. § 501(a), the Secretary of Defense may request the Secretary of the Department of Homeland Security (DHS) to waive the navigation laws to the extent the Secretary of Defense considers such a waiver *necessary in the interest of national defense*.

For all other waiver requests, under 46 U.S.C. § 501(b), the Secretary of DHS is authorized to grant the waiver request if the Secretary of DHS considers it *necessary in the interest of national defense* and if the Maritime Administrator determines there is no coastwise-qualified vessel capacity to conduct the transportation set forth in the request.

## **APPLICABLE REGULATIONS**

### 19 C.F.R. § 4.50(b)- Passenger Lists

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

### 19 C.F.R. § 4.80- Vessels Entitled to Engage in Coastwise Trade

Vessels may not transport passengers either directly or via a foreign port between coastwise points, including points within a harbor, unless the vessel has been issued a coastwise endorsement on its certificate of documentation by the U.S. Coast Guard or is exempt from documentation but otherwise eligible for a coastwise endorsement (also known as a “coastwise-qualified vessel”). Foreign vessels, as well as U.S. vessels that are not documented with a coastwise endorsement, may embark passengers at a U.S. point for disembarkation at a foreign port and *vice versa*. Non-coastwise-qualified vessels



that transport passengers between coastwise points will be penalized \$300 for each passenger transported and landed on or before November 2, 2015 and \$798 for each passenger transported and landed after November 2, 2015. A Vessel qualified to engage in the coastwise trade will lose that right if it is sold to a foreign individual or entity, or is placed under foreign registry (unless the vessel is 200 gross tons or less) or if it was rebuilt (unless the entire rebuilding was done in the United States).

### 19 C.F.R. § 4.80a- Coastwise transportation of passengers

The CBP regulations in 19 C.F.R. § 4.80a set forth the definitions used in the enforcement of the PVSA including “coastwise port”, “nearby foreign port” and “distant foreign port”, as well as the meaning of “embark and disembark”. In addition, this section sets forth scenarios that would apply the PVSA to the transportation of passengers on non-coastwise-qualified vessels.

### 19 C.F.R. Part 177

CBP issues prospective ruling letters regarding the PVSA pursuant to 19 C.F.R. Part 177.

### 33 C.F.R. 2.22- Territorial Sea

The territorial sea of the United States means the waters, three nautical miles wide, adjacent to the U.S. coast and seaward of the territorial sea baseline.

## **COASTWISE TRANSPORTATION OF PASSENGERS**

There are three key elements to examine when determining whether a particular transportation constitutes coastwise transportation. These elements are: (1) whether the transportation is between coastwise points, (2) whether the transportation is being provided on a coastwise-qualified vessel, and (3) whether the individuals being transported are “passengers” within the meaning of the PVSA. This section discusses each of these considerations in turn by examining the geographic locations where the PVSA applies, the requirements for a vessel to be considered “coastwise-qualified,” and the characteristics of who is a “passenger.”

### **Geographic Locations Where the PVSA Applies**

#### **Points in the United States, including its island territories and possessions**

A non-coastwise-qualified vessel may not transport passengers directly between U.S. coastwise ports or indirectly via several U.S. ports.<sup>3</sup>

EXAMPLE: A coastwise transportation violation occurs when a passenger embarks a non-coastwise-qualified vessel in San Francisco and is transported to Seattle, where the passenger disembarks.

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<sup>3</sup> 19 C.F.R. § 4.80a(b)(1).

EXAMPLE: A PVSA violation occurs when passengers embark a non-coastwise-qualified vessel in Los Angeles and are transported to several Hawaiian Islands where the passengers go ashore temporarily then return to the vessel and disembark in Los Angeles.

### **Points within the United States Three Mile Territorial Limit**

The PVSA applies to the territorial sea, defined as the waters, three nautical miles wide, adjacent to the U.S. coast and seaward of the territorial sea baseline.<sup>4</sup> As such, the transportation of passengers entirely within territorial waters, even though the passengers disembark at a coastwise point of embarkation and the vessel touches no other coastwise point, is considered coastwise trade subject to the coastwise laws.

### **Points within the United States Inland Waterways**

The PVSA applies to points located in internal waters, landward of the territorial sea baseline, including navigable waters.<sup>5</sup>

### **Points on the Outer Continental Shelf**

The coastwise laws, including the PVSA, apply to points on the Outer Continental Shelf under the Outer Continental Shelf Lands Act (OCSLA). The Outer Continental Shelf is defined as all submerged lands lying seaward of state coastal waters (three miles offshore), which are under U.S. jurisdiction. OCSLA extends the laws of the United States to:

- The subsoil and seabed of the OCS.
- 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 OCS were an area of exclusive Federal jurisdiction within a State.
- Any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources.<sup>6</sup>

### **Between U.S. Points via a “nearby foreign port”**

A non-coastwise-qualified vessel may not transport passengers between U.S. coastwise ports by way of a “nearby foreign port.”<sup>7</sup> A “nearby foreign port” is any foreign port in:

- North America
- Central America

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<sup>4</sup> 33 C.F.R. § 2.22(a)(2).

<sup>5</sup> HQ [111275](#) (Nov. 13, 1990).

<sup>6</sup> 43 U.S.C. § 1333(a).

<sup>7</sup> 19 C.F.R. § 4.80a(b)(2).

- The Bermuda Islands
- The West Indies
  - EXCEPTION: Leeward Islands of the Netherlands Antilles, i.e., Aruba, Bonaire, and Curacao

A port in the U.S. Virgin Islands shall be treated as a nearby foreign port.<sup>8</sup>

EXAMPLE: A PVSA violation occurs when a non-coastwise-qualified vessel embarks passengers in Los Angeles, transports them to the Hawaiian Islands and Ensenada, Mexico, and then proceeds to San Diego where the passengers disembark. Ensenada, Mexico is a “nearby foreign port”.

NOTE: Application of the PVSA is based on the geographic locations where passengers “embark” and “disembark”. The transporting vessel’s itinerary, whether the passenger is a revenue or non-revenue passenger, or how the passenger’s transportation is ticketed, is irrelevant.

EXAMPLE: The transportation of passengers aboard a non-coastwise-qualified vessel M/V MAURY on ticket/itinerary from San Francisco, California to Vancouver, Canada, where the passengers depart the vessel with their luggage in Vancouver. If the same passengers reboard the M/V MAURY in Vancouver using different tickets and disembark at any other coastwise port other than San Francisco, the M/V MAURY would be a violation of 46 U.S.C. § 55103.<sup>9</sup>

### **Vessels Qualified to Engage in Coastwise Transportation, Coastwise-Qualified Vessel**

Although CBP determines whether the transportation activities are considered coastwise trade, whether the vessel itself is *qualified* to engage in coastwise trade is determined by the United States Coast Guard, National Vessel Documentation Center (NVDC). The NVDC determines vessel eligibility for coastwise endorsements and issues certificates of documentation.<sup>10</sup> This section discusses the general requirements that a vessel must meet in order to be considered “coastwise-qualified.” If a vessel is coastwise-qualified, it may engage in the coastwise trade, including transporting “passengers” between coastwise points. In general, a coastwise-qualified vessel must be U.S.-built, owned, and documented with a coastwise endorsement.

#### **U.S.-built**

The vessel must be built in the United States<sup>11</sup>

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<sup>8</sup> 19 C.F.R. § 4.80a(a)(2).

<sup>9</sup> [HQ H141177](#) (Jan. 11, 2011).

<sup>10</sup> Questions regarding the eligibility of a vessel for documentation should be addressed to NVDC at the [NVDC website](#).

<sup>11</sup> 46 U.S.C. § 12112.

Note: A U.S.-built vessel will lose its eligibility to engage in the coastwise trade if it is sold to a foreign individual or entity, or placed under foreign registry (unless the vessel is 200 gross tons or less), or if it was rebuilt (unless the entire rebuilding was effected in the United States).<sup>12</sup> Rebuild determinations are made by the United States Coast Guard.

**EXCEPTION:**

The Small Vessel Waiver Program, administered by the Department of Transportation's Maritime Administration (MARAD), may, in certain cases issue a waiver of the U.S.-build requirement for foreign vessels to operate in the United States as commercial passenger vessels. In order to procure a small vessel waiver, the vessel must meet certain eligibility requirements, which can be found here: <https://www.maritime.dot.gov/ports/domestic-shipping/small-vessel-waiver-program>.

**Owned by a U.S. citizen**

The vessel must be owned by a U.S. citizen.<sup>13</sup>

**Documented by the U.S. Coast Guard with a Coastwise Endorsement**

In order to be issued a certificate of documentation, the vessel must be:

- (1) Owned by a U.S. citizen or another eligible owner listed in 46 U.S.C. § 12103(b)
- (2) At least five net tons
- (3) Not documented under the laws of a foreign country<sup>14</sup>

In addition, a coastwise-qualified vessel must have a coastwise endorsement on its certificate of documentation.<sup>15</sup>

**EXCEPTION:**

Vessels of less than five net tons will not be documented by the U.S. Coast Guard.<sup>16</sup> For those vessels to engage in coastwise transportation, they must, except for their tonnage, otherwise be entitled to be documented with a coastwise endorsement.<sup>17</sup>

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<sup>12</sup> 19 C.F.R. § 4.80(e).

<sup>13</sup> 46 U.S.C. § 12103(b).

<sup>14</sup> 46 U.S.C. § 12103.

<sup>15</sup> 46 U.S.C. § 12112.

<sup>16</sup> 46 U.S.C. § 12103.

<sup>17</sup> 19 C.F.R. § 4.80(a)(2).

The U.S. Coast Guard's National Vessel Documentation Center (NVDC) determines documentation and endorsement eligibility. Please contact the NVDC at the [NVDC website](#).

### **Who is a Passenger?**

Vessels that are coastwise-qualified may transport "passengers" between coastwise points without violating the PVSA. Non-coastwise-qualified vessels, however, are not permitted to transport "passengers" between coastwise points.

#### **Passenger Defined**

Pursuant to 19 C.F.R. § 4.50(b), a passenger is any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business.

- CBP has interpreted this regulation to mean that a "passenger" within the meaning of the PVSA is any person transported on a vessel who is **not directly and substantially connected with the operation of the vessel, her navigation, ownership, or business.**<sup>18</sup>

EXAMPLES: The following are examples of persons who are not "directly and substantially" related to the operation, navigation, ownership, or business of the vessel itself.

- Travel Agents
  - CBP found that two travel consultants were passengers insofar as the individuals were not engaged in any shipboard activities that would be "directly and substantially" related to the operation or business of the vessel itself.<sup>19</sup>
- Observers not engaged in any shipboard activities
  - CBP ruled that a shipping agency trainee transported aboard a vessel to "observe what goes on during a vessel's voyage" was a "passenger" within the meaning of 46 U.S.C. § 55103 insofar as the trainee was not "directly and substantially" connected with the operation, navigation, ownership or business of the vessel itself.<sup>20</sup>

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<sup>18</sup> See 19 C.F.R. § 4.50(b) and *Modification and Revocation of Customs Ruling Letters Relating to the Applicability of Customs Position on Who is Considered a Passenger Under the Coastwise Laws*, published in the *Customs Bulletin and Decisions*, Vol. 36, No. 23, June 5, 2002.

<sup>19</sup> [HQ H078776](#) (Oct. 5, 2009).

<sup>20</sup> [HQ H008513](#) (Mar. 21, 2007).

- CBP found that the transportation of a terminal operations staff member aboard a vessel to observe the "day-to-day activities aboard the ship" to become familiar with vessel operations may foster the business of the shipping company, but it does not connect the staff member directly and substantially with the business of the vessel itself.<sup>21</sup>

EXAMPLES: Transportation of the following individuals on a non-coastwise-qualified vessel would not result in a violation of the PVSA because the activity and work aboard the vessel while the vessel is in transit between coastwise points is "directly and substantially" related to the operation, navigation, ownership, or business of the vessel itself:

#### Operation or Navigation of the Vessel

- Auditors and inspectors conducting surveys pursuant to the International Ship and Port Facility Security (ISPS) Code, International Safety Management (ISM) Code, International Convention for the Safety of Life at Sea (SOLAS), and International Convention for the Prevention of Pollution from Ships (MARPOL).<sup>22</sup>
- Cargo hold cleaning crews performing cargo hold cleaning operations.<sup>23</sup>
- Safety and maintenance inspectors<sup>24</sup>
- Individuals conducting safety trainings for the crew.<sup>25</sup>
- Technicians conducting maintenance or repairs on the vessel.<sup>26</sup>

#### Ownership or Business of the Vessel

- The officers of a company owning a vessel, and, if the corporate owner, the members of its board of directors, if acting in their official capacities while onboard the vessel.<sup>27</sup>

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<sup>21</sup> [HQ H083895](#) (Nov. 16, 2009).

<sup>22</sup> [HQ H283532](#) (Feb. 15, 2017).

<sup>23</sup> [HQ H290674](#) (Sept. 29, 2017).

<sup>24</sup> [HQ H273542](#) (Feb. 26, 2016).

<sup>25</sup> [HQ H285618](#) (Apr. 24, 2017).

<sup>26</sup> [HQ H248269](#) (Nov. 26, 2013).

<sup>27</sup> [HQ H069521](#) (Sep. 14, 2009).

## Spouse and Children of Officers of a Vessel

The spouse and children of officers of a vessel are not passengers. The children must be a part of the officer's household.<sup>28</sup> CBP has found the following positions to be officers of the vessel:

- Captain/Master/Chief Officer;<sup>29</sup>
- Chief/First Mate;<sup>30</sup>
- Second Officer;<sup>31</sup>
- Third Officer;<sup>32</sup>
- Radio Officer;<sup>33</sup>
- Chief Engineer;<sup>34</sup> and
- First Assistant Engineer.<sup>35</sup>

## Exceptions to the PVSA

The PVSA does not apply to:

- American Samoa, the Northern Mariana Islands, or the U.S. Virgin Islands.
- The transportation of passengers between a port in Puerto Rico and another port in the United States.  
Note: This exception does not apply to the transportation of passengers between ports in Puerto Rico.<sup>36</sup> Such a transportation would be a violation of the PVSA.
- Canadian Vessels
  - Holding a permit issued by the Secretary of the Department of Transportation may transport passengers between Rochester, New York and Alexandria Bay, New York.
  - Transporting passengers between ports in Southeastern Alaska.
  - Transporting passengers between Hyder, Alaska and other points in southeastern Alaska or in the United States outside Alaska.

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<sup>28</sup> See Bureau of Navigation General Letter No. 117 (May 20, 1916).

<sup>29</sup> [H281268](#) (Nov. 21, 2016); [H259211](#) (Nov. 14, 2014); [H205796](#) (Feb. 23, 2012).

<sup>30</sup> [H272001](#) (Jan. 12, 2016); [H216023](#) (May 3, 2012).

<sup>31</sup> HQ [H030301](#) (Jun. 9, 2008).

<sup>32</sup> [H276911](#) (Jun. 24, 2016); [H278892](#) (Sep. 2, 2016); [H036200](#) (Aug. 22, 2008).

<sup>33</sup> [H030524](#) (Jun. 11, 2008).

<sup>34</sup> [H259697](#) (Dec. 1, 2014); HQ [H007256](#) (Feb. 26, 2007).

<sup>35</sup> [H283922](#) (Feb. 28, 2017); HQ [H007875](#) (Mar. 12, 2007).

<sup>36</sup> See e.g., HQ [113255](#) (Oct. 25, 1994) (ruling that the transportation of passengers between Fajardo, Puerto Rico and the islands of Culebra and Vieques, Puerto Rico was in violation of the coastwise laws).

- “Voyages to Nowhere”
  - Transportation of passengers by a non-coastwise-qualified vessel from a U.S. point to the high seas (i.e. beyond the three-mile territorial sea) or foreign waters and back to the same point from which the passengers embarked, assuming the passengers do not go ashore, even temporarily, at another U.S. point.<sup>37</sup>
  
- Transportation between U.S. points via a “distant foreign port”
  - A “distant foreign port” is any foreign port that is not defined as a “nearby foreign port.”<sup>38</sup> A “nearby foreign port” is defined as any foreign port in North or Central America, the Bermuda Islands, or the West Indies (except the Leeward Islands of the Netherlands Antilles, i.e., Aruba, Bonaire, and Curacao).
  - Transportation of passengers on a voyage to one or more coastwise ports and a “distant foreign port” or ports (whether or not the voyage includes a nearby foreign port or ports) and the passenger disembarks at a coastwise port other than the port of embarkation, provided the passenger has proceeded with the vessel to a “distant foreign port.”<sup>39</sup>

EXAMPLE: A non-coastwise-qualified vessel that embarks passengers at a U.S. port and then transports them to Aruba, then proceeds to Key West where the passengers disembark does not violate the PVSA. A port in Aruba is a “distant foreign port”.<sup>40</sup>

### Immigration Matters

Regardless of whether their voyage is in compliance with the PVSA, individuals must be in compliance with the immigration laws of the United States. Immigration status is determined at CBP Ports of Entry.

## **PENALTY FOR PVSA VIOLATIONS**

CBP issues monetary penalties to vessel owners and operators for each passenger transported in violation of the PVSA. Vessel owners and operators may submit a petition for relief from these penalties at the port where the penalty was issued. The port may cancel or mitigate the penalty.

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<sup>37</sup> See 29 O.A.G. 318 (1912).

<sup>38</sup> 19 C.F.R. § 4.80a(b)(2).

<sup>39</sup> 19 C.F.R. § 4.80a(b)(3).

<sup>40</sup> 19 C.F.R. § 4.80a(a)(3).



## Penalty

- \* \$300 for each passenger transported and landed on or before November 2, 2015.
- \* \$798 for each passenger transported and landed after November 2, 2015.
- \* Issued to the vessel operator or carrier **not the passenger**.  
CBP does not have the authority to settle charge disputes between carriers that may have been issued penalties and their passengers that may have caused the violation.

## Petition

- **Only the vessel operator or carrier or their legal representative/agent may petition for relief from a penalty issued for a PVSA violation.**
- Filed at the CBP Port from which the penalty was issued.
- Filed *after* the penalty has been issued to the vessel operator or carrier.
- May contain a request that the penalty be cancelled or that the monetary amount of the penalty be mitigated to a lower amount.
  - Mitigation Requests: CBP has the sole authority to mitigate penalties at its discretion. Please review the Informed Compliance Publication on [Mitigation Guidelines](#) for additional information.

## **IMPORTANT - MITIGATION IS NOT A WAIVER OF THE PVSA**

## **PVSA RULING REQUESTS**

PVSA ruling letters are binding guidance from CBP as to whether the activities of individuals being transported by non-coastwise-qualified vessels would result in their being “passengers” within the meaning of the PVSA and if so, whether their transportation between coastwise points would result in a violation of 46 U.S.C. § 55103. The requester or other entities with identical circumstances may rely on the ruling and the ruling will govern how CBP will treat the specific transaction outlined in the ruling letter. PVSA ruling letters are **not mandatory**.

### Who May Request a Ruling Request

PVSA rulings are binding only on the vessel owner and operator and CBP. CBP will only accept ruling requests from vessel owners, operators or their agents, i.e., vessel agents, legal representatives. CBP will not accept ruling requests from any other entity, including the individual(s) being transported, unless CBP is provided with documentary evidence establishing that the requester has the authority to bind the vessel owner or operator.

### When to Request a Ruling Request

Requests must be submitted **prior to the date of embarkation.**

### Where to Submit a Ruling Request

Requests for PVSA rulings may be submitted by electronic mail to [PV SARULINGS@DHS.GOV](mailto:PV SARULINGS@DHS.GOV). Please indicate the name of the vessel in the subject line of the electronic mail submission. **Effective October 1, 2019, CBP will no longer accept PVSA ruling requests through the web form at [www.cbp.gov](http://www.cbp.gov).**

### What Information to Include in a Ruling Request<sup>41</sup>

- Vessel name
- Requester name, position, and company
- Requester telephone and fax number (optional)
- Name(s) of the individuals being transported
- U.S. port of embarkation
- U.S. port of disembarkation
- Dates of embarkation and disembarkation
- A detailed description of all activities the individual(s) will conduct aboard the vessel while it is transit
- Documentary evidence to support the ruling request, such as invoices, contracts, agreements.<sup>42</sup> **DO NOT SUBMIT COPIES OF PASSPORTS, ALIEN REGISTRATION CARDS, VISAS, DRIVERS LICENSES OR OTHER COUNTRY/STATE-ISSUED IDENTIFICATION, OR OTHER IMMIGRATION DOCUMENTS.**

EXAMPLE: A request proposes to transport Sam Smith aboard the non-coastwise-qualified M/V LOCH BREW between Miami and Jacksonville. Sam will be installing a stove in the vessel's galley. The request will not be complete unless CBP is provided with an invoice, contract, or other document kept in the normal course of business that shows Sam will be installing a stove aboard the M/V LOCH BREW along with the other details of the voyage.

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<sup>41</sup> Before submitting a request for a ruling, individuals are encouraged to review 19 C.F.R. Part 177 as well as the CBP [Rulings Program Informed Compliance Publication: What Every Member of the Trade Community Should Know About: U.S. Customs & Border Protection Rulings Program](#) (Dec. 2009) available at <https://www.cbp.gov/document/publications/us-customs-and-border-protection-rulings-program>.

<sup>42</sup> See 19 C.F.R. § 177.2(b)(4)

### Processing and Issuance of Ruling Letters

All ruling requests, including requests involving the PVSA, will be processed in the order they are received, regardless of the embarkation date. In order to receive a ruling response prior to the embarkation date, it is recommended that requests be submitted far in advance of the voyage to allow time for processing. Requests are not processed on weekends or when the Federal Government is closed. Requests that do not provide the required information will experience delays in processing. All ruling letters will be issued to the requester by electronic mail and will be published weekly on the [Customs Rulings Online Search System \(CROSS\)](#).

### Effect of Ruling Letters

- **Rulings do not waive compliance with the PVSA and are not “waivers.”**
- Rulings do not constitute “permission” to be transported aboard the vessel.
- Rulings remain in effect until the law changes or until CBP modifies or revokes the ruling.
- PVSA rulings may be relied upon by different entities other than the requester as long as facts of the issue being decided are identical.

EXAMPLE: Michael Jones will be transported between Savannah and Boston aboard the non-coastwise-qualified, M/V ELIZA JANE to repair a satellite dish. Michael does a search on the CROSS and finds H257757, involving the coastwise transportation of another person aboard the non-coastwise-qualified M/V WESTERDAM who will be conducting repairs to that vessel’s satellite dish. Michael or the carrier may rely on H257757 even though the vessel names are different, since the facts relating to what the individual is doing aboard the vessel are identical.

### Situations in Which No Ruling will be Issued

- The request is no longer prospective. The request was submitted after the embarkation date.
- The request submitted is incomplete and the additional information requested by CBP was submitted after the embarkation date or in insufficient time to allow processing prior to the embarkation date.
- The request is a duplicate of a request submitted by another interested party to the voyage/transaction.
  - For example, the vessel operator submits a request for a particular voyage and the vessel agent at the port of embarkation submits a request for the same voyage.
- The person/entity has not established that s/he or it has the authority to request a ruling on behalf of the vessel owner/operator.

- The vessel owner/operator has already received a penalty notice for violating the PVSA (see Penalty section above).
- The subject of the request has been ruled on previously by CBP.

EXAMPLE: In the example above involving Michael Jones, the vessel owner decides to submit a ruling request for Michael's voyage. CBP will not issue the vessel owner a ruling because the issue of whether an individual conducting satellite repairs during a coastwise voyage is a "passenger" within the meaning of the PVSA has been ruled on by CBP in H257557.

To determine whether CBP has previously ruled on a particular PVSA issue, please visit CROSS.

NOTE: The vessel owner should be prepared to provide to the CBP ports of embarkation or disembarkation proof that Michael is repairing the vessel's satellite during the voyage as well as the ruling relied on *should* a question arise at a CBP port of entry as to whether Michael's transportation will comply or complies with the PVSA.

## WAIVERS OF THE NAVIGATION LAWS

The navigation laws, including the PVSA, can only be waived by the Secretary of Homeland Security if certain requirements are met:

- The transportation requested must be "necessary in the **interest of national defense**," and
- If the waiver is requested under Section 501(b), the Maritime Administration at the Department of Transportation has confirmed that there **are no coastwise-qualified vessels available** to conduct the transportation.<sup>43</sup>

**A request to waive the PVSA should be submitted prior to the proposed transportation, i.e., embarkation of passengers. CBP strongly encourages potential requesters to contact the Maritime Administration prior to submitting a request to determine if there are any coastwise-qualified vessels available to conduct the transportation sought.**

To assist CBP with the processing of the request, the following information should be included in the request:

- Vessel name.

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<sup>43</sup> 46 U.S.C. § 501(b).

- Ports and dates of embarkation and disembarkation.
- The names of the individuals being transported and any work or activity the individuals will be conducting aboard, if any.
- An explanation why the transportation is necessary in the interest of national defense.

## WEBSITE APPENDIX

Coastwise Trade: Merchandise Informed Compliance Publication  
<https://www.cbp.gov/document/publications/coastwise-trade-merchandise>

Customs Rulings Online Search System (CROSS)  
<https://rulings.cbp.gov/home>

National Vessel Documentation Center  
<https://www.dco.uscg.mil/Our-Organization/Deputy-for-Operations-Policy-and-Capabilities-DCO-D/National-Vessel-Documentation-Center/>

Maritime Administration Small Vessel Waiver Program  
<https://www.maritime.dot.gov/ports/domestic-shipping/small-vessel-waiver-program>

Mitigation Guidelines Informed Compliance Publication  
<https://www.cbp.gov/trade/publications/informed-compliance-publication-mitigation-guidelines-fines-penalties-forfeitures-and>

Rulings Program Informed Compliance Publication  
<https://www.cbp.gov/document/publications/us-customs-and-border-protection-rulings-program>

## **ADDITIONAL INFORMATION**

### **The Internet**

The home page of CBP on the internet provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information—which includes proposed regulations, news releases, publications and notices, etc.—that can be searched, read online, printed or downloaded to your personal computer. The website was established as a trade-friendly mechanism to assist the importing and exporting community. The website also links to the home pages of many other agencies whose importing or exporting regulations CBP helps to enforce. The website also contains a wealth of information of interest to a broader public than the trade community. For instance, the “Know Before You Go” publication and traveler awareness campaign are designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is <https://www.cbp.gov>.

### **CBP Regulations**

The current edition of CBP Regulations of the United States is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, via the internet, phone, fax, postal mail, or email. Internet: <http://bookstore.gpo.gov>. Phone: DC Metro Area: (202) 512-1800, Toll-Free: (866) 512-1800, Monday through Friday, 8 a.m. – 4:30 p.m. EST, Fax: (202) 512-2104. Mail: U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000. Email: [Contactcenter@gpo.gov](mailto:Contactcenter@gpo.gov). A bound edition of Title 19, Code of Federal Regulations, is also available for sale from the same address. All proposed and final regulations are published in the Federal Register, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about online access to the Federal Register may be obtained by calling (202) 512-1530 between 8 a.m. and 4:30 p.m. EST. The Federal Register is available online at <https://www.ecfr.gov/>. These notices are also published in the weekly Customs Bulletin described below.

### **Customs Bulletin**

The Customs Bulletin and Decisions (Customs Bulletin) is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. The Customs Bulletin is available online at <https://www.cbp.gov/document/bulletins>.

## **Importing Into the United States**

This publication provides an overview of the importing process and contains general information about import requirements. The current edition of **Importing Into the United States** contains material explaining the requirements of the Mod Act. The Mod Act fundamentally altered the relationship between importers and CBP by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The current edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between CBP and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to the importation.

Single copies may be obtained from local offices of CBP, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An online version is available at the [CBP website](#).

## **Informed Compliance Publications**

CBP has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About...*" series. Check the website <https://www.cbp.gov> for current publications.

## **Value Publications**

[Customs Valuation Encyclopedia](#) (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. This publication may also be found online.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed customs broker, an attorney or a customs consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from CBP's ports of entry. Please consult the CBP website for an office near you. Contact information for ports of entry can also be found on the internet at [www.cbp.gov/contact/ports](http://www.cbp.gov/contact/ports).



**“Your Comments are Important”**

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

**REPORT SMUGGLING: 1-800-BE-ALERT**



**Visit our website: <https://www.cbp.gov>**