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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 for 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, Regulations and Rulings, is entitled “The Jones Act.” It provides guidance regarding the procedures that control the coastwise transportation of merchandise between U.S. coastwise points. 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 matters, for example, a licensed customs broker, attorney or a customs consultant.

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, 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 merchandise 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 merchandise, 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.

### Background

Federal laws protecting U.S. shipping date back to the First Congress in 1789. American shipping in the U.S. coastwise<sup>1</sup> trade has been protected from foreign competition, in order to encourage the development of a U.S. merchant marine, for both national defense and commercial purposes. As a result, all vessels engaged in U.S. coastwise trade have been required to be U.S.-built and U.S.-owned.

The coastwise law governing the transportation of merchandise was first established by Section 27 of the Merchant Marine Act of 1920, sponsored by Senator Wesley L. Jones (hence its name, the “Jones Act”), which revamped several U.S. shipping laws, including those governing cabotage, shipping mortgages, and seamen’s personal injury claims. That statute provided that “[N]o merchandise shall be transported by water, or by land and water, on penalty of forfeiture thereof, between points in the United States, including districts, territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States.”

### The Coastwise Laws: Merchandise vs. Passengers

Generally, the coastwise laws prohibit the transportation of merchandise or passengers in 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

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<sup>1</sup> Customs (now CBP) has always enforced the coastwise laws, except for a 58-year period (1884-1942) when the responsibility resided with the former Bureau of Navigation, which operated both under the Department of the Treasury (between 1884 and 1903) and the Department of Commerce (between 1903 and 1942).

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, regulations, and concepts relating to the transportation of merchandise under the Jones Act. This document is not applicable to the transportation of passengers under the PVSA. Please refer to the [Passenger Vessel Services Act](#) Informed Compliance Publication for information about the PVSA.

Specifically, in this publication, CBP will summarize:

- U.S. Statutes and Regulations Enforced by CBP Pertaining to the Jones Act
- Key Elements of the Jones Act
- Statutory Exceptions to the Jones Act
- The Penalty for Violations of the Jones Act
- Jones Act 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.

## **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 U.S. Virgin Islands.

### **46 U.S.C. § 55102 – Transportation of Merchandise**

The Jones Act provides that the transportation of merchandise between U.S. points is reserved for U.S.-built, U.S.-owned, and U.S.-documented vessels. Pursuant to section 55102, “a vessel 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, either directly or via a foreign port, unless the vessel— (1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and (2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 of Title 46 or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.”<sup>2</sup>

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<sup>2</sup> Formerly codified at 46 U.S.C. App. § 883. 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 a vessel that is wholly owned by a U.S. citizen, the U.S. government, a state government, and/or an eligible entity, partnership, or corporation; is at least five net tons; and is 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.

### 43 U.S.C. § 1333(a) – Laws and Regulations Governing Lands (the OCSLA)<sup>3</sup>

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.<sup>4</sup>

### 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 that the Secretary of the Department of Homeland Security (DHS) 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.

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<sup>3</sup> The Outer Continental Shelf Lands Act (OCSLA) of Aug. 7, 1953, ch 345, 67 Stat. 462, amended at Pub. L. 95-372 (1978), appears generally as 43 USCS §§ 1331– 1356.

<sup>4</sup> See, e.g., [HQ H287418](#) (Jun. 19, 2017).

## **APPLICABLE REGULATIONS**

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

A vessel may not transport merchandise 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”). The penalty imposed for the illegal transportation of merchandise between coastwise points is forfeiture of the merchandise or forfeiture of a monetary amount up to the value of the merchandise. A vessel qualified to engage in the coastwise trade will lose that right if it is “sold foreign”<sup>5</sup> or is placed under foreign registry (unless the vessel is 200 gross tons or less) or if it is rebuilt (unless the entire rebuilding was done in the United States).

### 19 C.F.R. § 4.80b - Coastwise Transportation of Merchandise

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 is unladen at another coastwise point, regardless of the origin or ultimate destination of the merchandise. Merchandise is not transported coastwise, however, if at an intermediate port or place other than a coastwise point (that is at a foreign port or place, or at a port or place in a territory or possession of the United States not subject to the coastwise laws), it is manufactured or processed into a new and different product, and the new and different product thereafter is transported to a coastwise point.

### 19 C.F.R. § 4.93 - Empty Cargo Containers, Stevedoring Equipment

U.S. vessels prohibited from engaging in coastwise trade as well as foreign-flag vessels of nations that grant reciprocal privileges to vessels of the United States may transport certain articles between coastwise points. These articles include empty cargo vans, empty lift vans, and empty shipping tanks and the equipment for use with said empty cargo vans, lift vans and shipping tanks; empty barges specifically designed to be carried aboard a vessel and equipment (excluding propulsion equipment) for use with such barges; and empty instruments of international traffic (IITs) if such articles are owned or leased by the owner or operator of the transporting vessel and are transported for the owner/operator’s use in handling the cargo in foreign trade. Similarly, stevedoring equipment and material are also exempt, if they are owned or leased by the owner or operator of the transporting vessel, or owned or leased by the stevedoring company contracting for the lading or unloading of that vessel, and are transported without charge

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<sup>5</sup> See 19 C.F.R. § 4.80(e)(1) (“No vessel which has acquired the lawful right to engage in the coastwise trade...will have the right to engage in such trade if it: (1) Thereafter has been sold foreign [(i.e., sold to a foreign citizen or entity)] in whole or in part or placed under a foreign registry....”).

for use in the handling of cargo in foreign trade. The list of nations that extend reciprocal privileges to U.S. vessels is set forth at 19 C.F.R. § 4.93(b).

### 19 C.F.R. Part 177 – CBP Administrative Rulings

CBP issues prospective ruling letters regarding the Jones Act 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 MERCHANDISE**

As outlined above, the Jones Act (46 U.S.C. § 55102) provides that the transportation of merchandise between U.S. points, either directly or via a foreign port, is reserved for U.S.-built, owned, and documented vessels. Consequently, foreign-flag vessels are prohibited from engaging in any part of the coastwise trade—transporting merchandise between U.S. coastwise points. In addition, the same prohibitions apply to U.S.-flag vessels that do not have a coastwise endorsement on their documentation.

### Key Elements

There are three key elements in determining whether a particular scenario constitutes coastwise transportation within the meaning of the Jones Act: (1) whether the transportation is between coastwise points, (2) whether the transportation is provided on a coastwise-qualified vessel, and (3) whether the material transported constitutes “merchandise” within the meaning of the Jones Act. This section discusses each of these considerations in turn by examining the definition of “transportation,” the geographic locations at which the Jones Act applies, the requirements for a vessel to be considered “coastwise-qualified,” and the characteristics of what constitutes “merchandise.”

### What is Transportation?

The concept of “transportation” is fundamental to the application of the Jones Act and the coastwise laws. As outlined in 19 C.F.R. § 4.80b, a coastwise transportation of merchandise occurs when merchandise is laden at a point embraced within the coastwise laws (*i.e.*, a “coastwise point”) and unladen at another coastwise point, regardless of the origin or ultimate destination of the merchandise.

NOTE: As outlined in 46 U.S.C. § 55102, a non-coastwise-qualified vessel may not transport merchandise between coastwise points, either directly or via a foreign port.

EXAMPLE: Merchandise is laden onto a non-coastwise-qualified vessel in Maine and transported to St. John, Canada, where the merchandise is unladen and placed onto coastwise-qualified vessels for transportation to various ports on the East Coast of the United States. This scenario would violate the Jones Act because the non-coastwise-qualified vessel transported merchandise between coastwise points, albeit via a foreign port.<sup>6</sup>

NOTE: 46 U.S.C. § 55102 also provides that a non-coastwise-qualified vessel may not conduct “any part” of the transportation of merchandise between coastwise points.

EXAMPLE: A tugboat that is being built in Panama City, Florida, is laden on board a non-coastwise-qualified barge and transported into international waters where the barge submerges and the tug is launched into the water; a coastwise-qualified vessel then tows the tugboat back to Panama City, Florida. This scenario would violate the Jones Act because the non-coastwise-qualified barge took part in the transportation of merchandise (the tug boat) between two coastwise points.<sup>7</sup>

## **Situations in Which No Transportation Occurs**

### New and Different Products

As specified in 19 C.F.R. § 4.80b(a), merchandise is not transported coastwise if at an intermediate port or place (that is at a foreign port or place, or at a port or place in a U.S. territory or possession not subject to the coastwise laws), it is manufactured into a new and different product, and the new and different product is thereafter transported to a coastwise point.<sup>8</sup>

EXAMPLE: A non-coastwise-qualified vessel moves a shipment of cattle from Hawaii to Vancouver, British Columbia, Canada, where the cattle are slaughtered, dressed, packed, and then shipped onboard another non-coastwise-qualified vessel to Washington State. The cattle are manufactured to a new and different product; therefore, no “transportation” occurs.<sup>9</sup>

EXAMPLE: A non-coastwise-qualified vessel moves a shipment of iron ore pellets from Duluth, Minnesota, to Nanticoke, Ontario, Canada, where the pellets are sorted to separate large pellets from small pellets. The large pellets are fed into a blast furnace and the small pellets are then shipped onboard another non-coastwise-qualified vessel to Gary, Indiana. Merely sorting pellets by size does

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<sup>6</sup> See [HQ 111767](#) (Oct. 25, 1991).

<sup>7</sup> See [HQ H173946](#) (Apr. 13, 2016).

<sup>8</sup> 19 C.F.R. § 4.80b(b) further specifies that interested parties may request an advisory ruling from CBP as to whether a specific action taken or to be taken with respect to merchandise at an intermediate foreign port or place will result in the creation of a new and different product. Such a request shall be filed in accordance with 19 C.F.R. § 177, as discussed below.

<sup>9</sup> [HQ 112038](#) (Mar 3, 1992).

not constitute manufacture into a new and different product; this scenario therefore constitutes “transportation” under the Jones Act.<sup>10</sup>

### Continuity of Transportation

Merchandise is transported if it is laden at one coastwise point and unladen at another point, regardless of the origin or ultimate destination of the merchandise.<sup>11</sup> However, when merchandise is transported in a non-coastwise-qualified vessel from one coastwise point to a foreign port and subsequently returned to the United States “without existing intent on the part of those responsible for the transportation that [the merchandise] shall be transshipped to an American port...[w]hether the subsequent transportation of such [merchandise] to an American port is a violation of [section 55102] must be determined by the existing facts in each case.”<sup>12</sup>

EXAMPLE: Grain sold to buyers in Japan is transported on board a non-coastwise-qualified vessel from a U.S. port to Kagoshima, Japan, where it is denied entry by the Japanese government and returned to a U.S. port by a different non-coastwise-qualified vessel. The seller subsequently provides evidence establishing that it had intended to enter the merchandise into the commerce of Japan. As such, the continuity of transportation is broken and no violation of the Jones Act occurs.<sup>13</sup>

### Lifting Operations

CBP has also interpreted the Jones Act and the underlying regulations such that certain lifting operations do not constitute transportation under the Jones Act. CBP has long held that the use of a non-coastwise-qualified crane vessel to load and unload cargo or to construct/dismantle a marine vessel is not coastwise transportation and does not violate the Jones Act provided that any movement of merchandise is effected exclusively by the crane and not by any movement of the vessel, except for necessary movement that is incidental to a lifting operation.

EXAMPLE: No Jones Act violation occurs when a non-coastwise-qualified crane barge lifts stones at one coastwise point, swivels its crane, and deposits the stones at another coastwise point. Although the barge remains anchored during the operation, it is jostled by wave action and the movement of its crane arm.<sup>14</sup> Such “movement” does not constitute transportation.

EXAMPLE: No Jones Act violation occurs when a non-coastwise-qualified lifting vessel lifts merchandise from one coastwise point, pivots 90 degrees on its axis

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<sup>10</sup> [HQ H261457](#) (May 7, 2015).

<sup>11</sup> 19 C.F.R. § 4.80b(a).

<sup>12</sup> [HQ H117395](#) (Aug. 9, 2010) (citing HQ 100381 (Feb. 23, 1973)).

<sup>13</sup> [HQ 116518](#) (Aug. 9, 2005).

<sup>14</sup> [HQ 115212](#) (Nov. 16, 2002).

while the merchandise is suspended, and lowers the merchandise into place at another coastwise point.<sup>15</sup>

CBP has also clarified that certain lateral movements that are incidental to an offshore lifting operation do not constitute transportation pursuant to the Jones Act. The term “offshore lifting operations” includes the lifting by cranes, winches, lifting beams, or other similar activities or operations, from the time that the lifting activity begins when unloading from a vessel or removing offshore facilities or subsea infrastructure until the time that the lifting activities can be safely terminated. Such lifting operations may include any of the following:

- (1) the initial vertical movement of an item from a lower position to a higher position, and any additional vertical or lateral movement effected by a vessel’s lifting equipment or by the vessel itself that is necessary to safely place into position or to remove an item from the vicinity of an existing structure, facility or installation. This includes incidental movement of the vessel occurring while lifted items are temporarily placed on the deck of the lifting vessel as needed for the safety of the item, surface and subsea infrastructure, and the vessels and mariners involved;
- (2) any lateral movement of the vessel or the item in the vicinity of the structure or facility where the item is being positioned or removed that is merely subordinate to and a direct consequence of the lifting operation; or
- (3) any lateral movement in the lift operations area that is necessary for safety and practical concerns, including the physical demands of the lifting operations, the mitigation of risk to human life and health, and the avoidance of damage to the nearby surface and subsea infrastructure.<sup>16</sup>

### Where Does the Jones Act Apply?

#### **Points in the United States, Including its Island Territories and Possessions**

The Jones Act prohibits the transportation of merchandise between points in the United States (including the island territories and possessions of the United States), even points within a harbor, either directly or via a foreign port, or for any part of the transportation, in any vessel other than one that is coastwise qualified.<sup>17</sup>

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<sup>15</sup> [HQ H242466](#) (July 3, 2013).

<sup>16</sup> See “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,” [Customs Bulletin, Vol. 53, No. 45](#) (Dec. 11, 2019).

<sup>17</sup> 46 U.S.C. § 55101(a); 19 C.F.R. § 4.80(a).

EXAMPLE: A Jones Act violation occurs when merchandise is laden onboard a non-coastwise-qualified vessel in Sacramento and is transported to Seattle, where the merchandise is unladen.

EXAMPLE: A Jones Act violation occurs when merchandise is laden onboard a non-coastwise-qualified vessel in Baltimore harbor and it is transported to another berth in that same harbor, where the merchandise is unladen.

EXCEPTION: The Jones Act does not apply to American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), or the U.S. Virgin Islands.<sup>18</sup> Although CNMI is typically excluded from the Jones Act, this exclusion does not extend to the activities of the U.S. government and its contractors or to the transportation of U.S. government cargo.<sup>19</sup>

### **Points within the United States Three-Mile Territorial Sea**

The Jones Act 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>20</sup> As such, the transportation of merchandise entirely between points within territorial waters is considered coastwise trade subject to the coastwise laws.

EXAMPLE: A Jones Act violation would occur when merchandise is laden onboard a non-coastwise-qualified vessel located within U.S. territorial waters (anchored or unanchored) and is then transported to a U.S. port where it is unladen.

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

The Jones Act applies to points located in internal waters, landward of the territorial sea baseline, including navigable waters.<sup>21</sup>

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

The Jones Act also applies to points on the Outer Continental Shelf (OCS) under the Outer Continental Shelf Lands Act (OCSLA),<sup>22</sup> which 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

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<sup>18</sup> 46 U.S.C. § 55101(b).

<sup>19</sup> [HQ 112917](#) (Oct. 19, 1993).

<sup>20</sup> 33 C.F.R. § 2.22(a)(2).

<sup>21</sup> [HQ 111275](#) (Nov. 13, 1990).

<sup>22</sup> 43 U.S.C. § 1333.

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>23</sup>

EXAMPLE: Under the OCSLA, the Jones Act is extended to artificial islands and similar structures, as well as to mobile oil drilling rigs, drilling platforms, and other devices attached to the seabed of the OCS for the purpose of resource extraction and/or exploration operations. This includes drilling rigs located on the OCS, which are considered points or places in the United States for purposes of the Jones Act. Similarly, floating, anchored warehouse vessels, when anchored on the OCS to supply drilling rigs on the OCS, are also coastwise points.<sup>24</sup>

### When is a Vessel Qualified to Engage in Coastwise Transportation (i.e., coastwise-qualified)?

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>25</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 merchandise 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>26</sup>

NOTE: A U.S.-built vessel will lose its eligibility to engage in the coastwise trade if it is sold foreign or placed under foreign registry (unless the vessel is 200 gross tons or less) or if it is rebuilt (unless the entire rebuilding is effected in the United States).<sup>27</sup> Rebuild determinations are made by the United States Coast Guard.

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<sup>23</sup> 19 C.F.R. § 4.80b(a). See *Demette v. Falcon Drilling*, 280 F.3d 492 (5th Cir. 2002).

<sup>24</sup> [HQ 112387](#) (July 23, 1992).

<sup>25</sup> Questions regarding the eligibility of a vessel for documentation should be addressed to NVDC at the [NVDC website](#).

<sup>26</sup> 46 U.S.C. § 12112.

<sup>27</sup> 19 C.F.R. § 4.80(e).



### **Owned by a U.S. Citizen**

The vessel must be owned by a U.S. citizen, an entity (e.g., partnership, corporation) owned and controlled by U.S. citizens and incorporated in the United States, or a federal or state government entity.<sup>28</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; and
- (3) Not documented under the laws of a foreign country.<sup>29</sup>

In addition, a coastwise-qualified vessel must have a coastwise endorsement on its certificate of documentation.<sup>30</sup>

#### **EXCEPTIONS:**

Vessels of less than five net tons will not be documented by the U.S. Coast Guard.<sup>31</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>32</sup>

In addition, a certificate of documentation and appropriate endorsement may be issued for a vessel that—(1) is owned by a Bowaters corporation; (2) was built in the United States; and (3) is self-propelled and less than 500 gross tons or is not self-propelled. The term “Bowaters corporation” relates to certain U.S. corporations primarily engaged in the manufacturing or mineral industries.<sup>33</sup>

NOTE: The U.S. Coast Guard’s NVDC determines documentation and endorsement eligibility. Please contact the NVDC at the [NVDC website](#).

#### **What is Merchandise?**

Vessels that are coastwise-qualified may transport “merchandise” between coastwise points without violating the Jones Act. Non-coastwise-qualified vessels, however, are not permitted to transport “merchandise” between coastwise points.

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<sup>28</sup> 46 U.S.C. § 12103(b).

<sup>29</sup> 46 U.S.C. § 12103.

<sup>30</sup> 46 U.S.C. § 12112.

<sup>31</sup> 46 U.S.C. § 12103.

<sup>32</sup> 19 C.F.R. § 4.80(a)(2).

<sup>33</sup> 46 U.S.C. § 12118.

## Merchandise Defined

The text of the Jones Act, 46 U.S.C. § 55102, defines the term “merchandise” to include— (1) merchandise owned by the United States government, a State, or a subdivision of a State; and (2) valueless material. 19 U.S.C. § 1401(c) further defines “merchandise” to mean goods, wares, and chattels of every description, and includes merchandise the importation of which is prohibited, and monetary instruments.

## Goods Not Considered Merchandise

### *Sea Stores and Vessel Equipment*

Customs law recognizes that certain, limited categories of items do not constitute “merchandise” under the Jones Act. Sea stores (*i.e.*, supplies for the consumption, sustenance, and medical needs of the crew and passengers during the voyage) are not considered merchandise.<sup>34</sup>

Similarly, equipment of the transporting vessel (*i.e.*, “vessel equipment”) is not considered merchandise, nor is the baggage or personal effects of crew or passengers. Vessel equipment includes “portable items necessary and appropriate for the navigation, operation or maintenance of a vessel and for the comfort and safety of the persons on board.”<sup>35</sup>

The determination of whether an item constitutes “vessel equipment” is a highly particularized and fact-specific one. Items considered “necessary and appropriate for the operation of the vessel” are those items that are integral to the function of the vessel and are carried by the vessel. These items *may* include, for example, those items that aid in the installation, inspection, repair, maintenance, surveying, positioning, modification, construction, decommissioning, drilling, completion, workover, abandonment or other similar activities or operations of wells, seafloor or subsea infrastructure, flow lines, and surface production facilities. CBP also emphasizes that the fact that an item is returned to and departs with the vessel after an operation is completed, and is not left behind on the seabed, is a factor that weighs in favor of an item being classified as vessel equipment, but is not a sole determinative factor.<sup>36</sup>

## STATUTORY EXCEPTIONS

Several narrow exceptions to the Jones Act are codified into law under Title 46 of the U.S. Code. These include the following:

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<sup>34</sup> See Treasury Decision (T.D.) 40934 (1925).

<sup>35</sup> See T.D. 49815(4) (1939).

<sup>36</sup> See “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,” [Customs Bulletin, Vol. 53, No. 45](#) (Dec. 11, 2019).

#### 46 U.S.C. § 55105(b) - Transportation of Hazardous Waste

Although the transportation of hazardous waste is deemed to be transportation pursuant to the Jones Act, this section provides narrow circumstances in which non-coastwise-qualified vessels may transport hazardous waste between coastwise points.

#### 46 U.S.C. § 55106 – Merchandise Transferred Between Barges

Under specified circumstances, merchandise may be transferred between non-coastwise-qualified barges owned or leased by the same owner if reciprocal treatment is extended to U.S. vessels by the vessels' state of registry.

#### 46 U.S.C. § 55107 – Empty Cargo Containers and Barges

In general, the Jones Act does not apply to the transportation of empty cargo vans, empty lift vans, or empty shipping tanks; equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and equipment (except propulsion equipment) for use with those barges; empty instruments of international traffic (IIT); stevedoring equipment and material, if the government of the nation of the vessel's registry extends reciprocal privileges to vessels of the United States.

#### 46 U.S.C. § 55108 – Platform Jackets

The Jones Act does not apply to the transportation of certain "platform jackets" in or on a non-coastwise-qualified launch barge between two coastwise points, at one of which there is an installation or other device within the meaning of the OCLSA.

#### 46 U.S.C. § 55113 – Use of Foreign Documented Oil Spill Response Vessels

An oil spill response vessel documented under the laws of a foreign country may operate in waters of the United States on an emergency basis, for the purpose of recovering, transporting, and unloading in a U.S. port oil discharged as a result of an oil spill in or near those waters, if an adequate number and type of U.S. coastwise-qualified oil spill response vessels are unavailable and the foreign country extends reciprocal privileges to U.S. vessels.

#### 46 U.S.C. § 55116 – Canadian Rail Lines

The Jones Act does not apply to the transportation of merchandise between points in the continental United States, including Alaska, over through routes in part over Canadian rail lines and connecting water facilities if the routes are recognized by the Surface Transportation Board and rate tariffs for the routes have been filed with the board.

#### 46 U.S.C. § 55117 – Great Lakes Rail Route

Under certain circumstances, the Jones Act does not apply to the transportation of merchandise loaded on a railroad car or certain motor vehicles when the railroad car or vehicle is transported in a railroad car ferry operating between fixed terminals on the Great Lakes as part of a rail route.

#### 46 U.S.C. § 55119 – Yukon River

The Jones Act does not apply to the transportation of merchandise on the Yukon River until the Alaska Railroad is completed and the Secretary of Transportation determines that facilities are available for transportation by U.S. citizens to properly handle the traffic.

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

Until the Secretary of Transportation determines that suitable U.S. vessels are available, the Jones Act does not restrict the transportation on Canadian vessels of merchandise between Hyder, Alaska, and other points in southeastern Alaska or in the United States outside of Alaska.

#### 46 U.S.C. § 55122 – Floating Dry Docks

The Jones Act does not apply to the movement of a floating dry dock if the dry dock is being used to launch or raise a vessel in connection with the construction, maintenance and repair of that vessel, and the dry dock is owned and operated by an “eligible owner” defined under 46 U.S.C. § 12103(b) (*i.e.*, certain U.S. persons or corporate entities) or an affiliate thereof, and was owned or contracted for purchase by such shipyard or affiliate prior to 2015.

### **PENALTY FOR JONES ACT VIOLATIONS**

CBP may issue a penalty under the Jones Act against any person transporting the merchandise or causing the merchandise to be transported in violation of the Jones Act. Such parties 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.

#### Penalty

- A monetary amount equal to the value of the merchandise or the actual cost of the transportation, whichever is greater.
- Issued to any person transporting the merchandise or causing the merchandise to be transported.

## Petition

- Only the party against whom a penalty was issued or its legal representative/agent may petition for relief from a penalty issued for a Jones Act violation.
- Filed at the CBP Port from which the penalty was issued.
- Filed *after* the penalty has been issued.
- May contain a request that the penalty be canceled or that the monetary amount of the penalty be mitigated to a lower amount.
  - CBP may remit without payment any Jones Act penalty if there is satisfactory evidence that the violation occurred as a direct result of an arrival of the transporting vessel in distress.
  - 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.

NOTE: IMPORTANT- MITIGATION IS NOT A WAIVER OF THE JONES ACT.

## **JONES ACT RULING REQUESTS**

Jones Act ruling letters are binding guidance from CBP as to whether the transportation of material by a non-coastwise-qualified vessel would result in a violation of 46 U.S.C. § 55102. 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. Jones Act ruling letters are **not mandatory**.

### Who May Submit a Ruling Request

Jones Act rulings are binding only on the parties to the subject transaction and on CBP. CBP will accept Jones Act ruling requests from vessel owners and operators, the person or entity causing the merchandise to be carried (*e.g.*, the purchaser of the subject merchandise), the owner of the subject merchandise, or agents of such parties (*e.g.*, vessel agents, legal representatives, customs brokers).

### When to Submit a Ruling Request

Requests must be submitted **prior to the date of the proposed transportation**.

### Where to Submit a Ruling Request

Requests for Jones Act rulings may be submitted to the following address:

Chief, Cargo Security, Carriers and Restricted Merchandise Branch  
Regulations and Rulings  
Office of Trade  
90 K Street, NE, 10th Floor  
Washington, DC 20229

Ruling requests may also be submitted via email to the Branch Chief, Cargo Security, Carriers, and Restricted Merchandise Branch, Regulations and Rulings or via <https://erulings.cbp.gov/s/>.

### What Information to Include in a Ruling Request

- Vessel name, place of build, and nationality of registration
- Requester name, position, and company
- Requester telephone and email address
- A detailed description of the material to be transported
- Location at which the subject material will be laden on board the vessel
- Location at which the subject material will be unladen
- Dates of lading and unlading
- A detailed description of the proposed voyage, including every port or point on the itinerary<sup>37</sup>

### Processing and Issuance of Ruling Letters

All ruling requests, including requests involving the Jones Act, will be processed in the order they are received, regardless of the lading or transportation date. In order to receive a ruling response prior to the proposed transportation of laden merchandise, it is recommended that ruling requests be submitted far in advance of the voyage to allow time for processing. Ruling 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 issued to the requester by electronic mail and will be published weekly on the [Customs Rulings Online Search System](#).

### Effect of Ruling Letters

- **Rulings do not waive compliance with the Jones Act and are not “waivers.”**
- Rulings remain in effect until the law changes or until CBP modifies or revokes the ruling.

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<sup>37</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*, available at <https://www.cbp.gov/document/publications/us-customs-and-border-protection-rulings-program>.

- Rulings may be relied upon by different entities other than the requester only so long as the facts and circumstances of the issue being decided are identical.

EXAMPLE: Company X proposes to transport plastic pellets onboard the M/V FLYING DUTCHMAN from New York to Baltimore, with an intervening stop in Ireland where the pellets will be melted and pressed into widgets. Company X hopes that the processing in Ireland will create a “new and different product.” Company X does a search on the Customs Rulings Online Search System and finds a ruling involving another vessel in which the owners of the M/V DAVEY JONES proposed processing plastic pellets into widgets at an intervening foreign port. Company X may rely on this ruling because even though the vessel names are different, the facts relating to the processing of plastic pellets at an intermediate port or place are identical.

### Situations in Which No Ruling Will Be Issued

- The request is no longer prospective. The request was submitted after the merchandise has been laden and the subject transportation began.
- The request submitted is incomplete and the additional information requested by CBP was submitted after the voyage begins or in insufficient time to allow processing prior to the voyage’s start 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 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 Jones Act (see Penalty section above).

To determine whether CBP has previously ruled on a particular Jones Act issue, please visit the [Customs Rulings Online Search System](#).

## **WAIVERS OF THE NAVIGATION LAWS**

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

- The transportation requested must be “necessary in the **interest of national defense,**” and

- The Maritime Administration at the Department of Transportation has confirmed that there **are no coastwise-qualified vessels available** to conduct the transportation.<sup>38</sup>

CBP processes all requests to waive the Jones Act. To assist CBP with the processing of the request, the following information should be included in the request:

- Vessel name.
- Ports and dates of lading and unlading.
- A description of the merchandise to be transported onboard the vessel.
- An explanation why the transportation is necessary and in the interest of national defense.

**NOTE: A request to waive the Jones Act should be submitted prior to the proposed transportation, i.e., lading and transportation of the subject merchandise. 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. Requests for a Jones Act waiver may be submitted to CBP's Jones Act waiver inbox at [jonesactwaiverrequest@cbp.dhs.gov](mailto:jonesactwaiverrequest@cbp.dhs.gov).**

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<sup>38</sup> 46 U.S.C. § 501(b). Waivers under 46 U.S.C. § 501(a) are within the jurisdiction of the Secretary of Defense.



## WEBSITE APPENDIX

Passenger Vessel Services Act Informed Compliance Publication:

<https://www.cbp.gov/sites/default/files/assets/documents/2019-Sep/PVSA-ICP.pdf>

Mitigation Guidelines Informed Compliance Publication:

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

What Every Member of the Trade Community Should Know About: U.S. Customs and Border Protection Rulings Program:

<https://www.cbp.gov/document/publications/us-customs-and-border-protection-rulings-program>

Customs Rulings Online Search System (CROSS):

<https://rulings.cbp.gov/home>

CBP Headquarters Ruling HQ H287418 (Jun. 19, 2017):

<https://rulings.cbp.gov/ruling/H287418>

CBP Headquarters Ruling HQ H111767 (Oct. 25, 1991):

<https://rulings.cbp.gov/ruling/111767>

CBP Headquarters Ruling HQ H173946 (Apr. 13, 2016):

<https://rulings.cbp.gov/ruling/H273946>

CBP Headquarters Ruling HQ 112038 (Mar. 3, 1992):

<https://rulings.cbp.gov/ruling/112038>

CBP Headquarters Ruling HQ H261457 (May 7, 2015):

<https://rulings.cbp.gov/ruling/H261457>

CBP Headquarters Ruling HQ H117395 (Aug. 9, 2010):

<https://rulings.cbp.gov/ruling/H117395>

CBP Headquarters Ruling HQ 116518 (Aug. 9, 2005):

<https://rulings.cbp.gov/ruling/116518>

CBP Headquarters Ruling HQ 115212 (Nov. 16, 2002):

<https://rulings.cbp.gov/ruling/115212>

CBP Headquarters Ruling HQ H242466 (July 3, 2013):  
<https://rulings.cbp.gov/ruling/H242466>

CBP Headquarters Ruling HQ 112917 (Oct. 19, 1993):  
<https://rulings.cbp.gov/ruling/112917>

CBP Headquarters Ruling HQ 111275 (Nov. 13, 1990):  
<https://rulings.cbp.gov/ruling/111275>

CBP Headquarters Ruling HQ 112387 (July 23, 1992):  
<https://rulings.cbp.gov/ruling/112387>

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, Customs Bulletin, Vol. 53, No. 45 (Dec. 11, 2019):  
[https://www.cbp.gov/sites/default/files/assets/documents/2019-Dec/Vol\\_53\\_No\\_45\\_Title.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2019-Dec/Vol_53_No_45_Title.pdf)

U.S. Coast Guard National Vessel Documentation Center (NVDC) Website:  
<https://www.dco.uscg.mil/Our-Organization/Deputy-for-Operations-Policy-and-Capabilities-DCO-D/National-Vessel-Documentation-Center/>

## ADDITIONAL INFORMATION

### The Internet

The CBP homepage 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 homepages 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 <http://www.cbp.gov>.

### CBP Regulations

The current edition of CBP Regulations 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> and <https://www.ecfr.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.federalregister.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 <https://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: <http://www.cbp.gov>