

*What Every Member of the
Trade Community Should Know About:*

The Passenger Vessel Services Act



AN INFORMED COMPLIANCE PUBLICATION

APRIL 2010

U.S. CUSTOMS and BORDER PROTECTION

NOTICE:

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.

Publication History

First Published: April 2010

PRINTING NOTE:

This publication was designed for electronic distribution via the CBP website (<http://www.cbp.gov>) and is being distributed in a variety of formats. It was originally set up in Microsoft Word 2003[®]. Pagination and margins in downloaded versions may vary depending upon which word processor or printer you use. If you wish to maintain the original settings, you may wish to download the .pdf version, which can then be printed using the freely available Adobe Acrobat Reader[®].

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 emerge 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 U.S. Customs and Border Protection, 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 customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection 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 U.S. Customs and Border Protection 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.

Regulations and Rulings (RR) of the Office of International Trade has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. 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 Cargo Security, Carriers and Immigration Branch, Border Security and Trade Compliance Division of Regulations and Rulings is entitled "The Passenger Vessel Services Act". It provides guidance regarding the procedures that control the coastwise transportation of passengers between U.S. ports. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, 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, a carrier may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a vessel agent, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to U.S. Customs and Border Protection, Office of International Trade, Executive Director, Regulations and Rulings, 799 9th Street N.W. 7th floor, Washington, D.C. 20229-1177.

Sandra L. Bell
Executive Director, Regulations and Rulings
Office of International Trade

(This page intentionally left blank)

INTRODUCTION.....	7
BACKGROUND.....	7
COASTWISE LAWS.....	8
THE PVSA	8
1. WHERE DOES THE PVSA APPLY?.....	11
2. U.S. TERRITORIAL WATERS.....	11
3. OUTER CONTINENTAL SHELF	11
1. VESSEL DOCUMENTATION	12
2. COASTWISE ENDORSEMENT.....	12
3. VESSEL ELIGIBILITY	12
IMPLEMENTING REGULATIONS	12
PENALTY	14
EXCEPTIONS.....	14
TRANSPORTATION OF MERCHANDISE AND PASSENGERS ON CANADIAN VESSELS—46 U.S.C. § 55121	14
CRUISE TO NOWHERE.....	15
WAIVER AUTHORITY—46 U.S.C. § 501.....	15
ADDITIONAL INFORMATION.....	17
The Internet.....	17
Customs Regulations	17
Customs Bulletin	17
Informed Compliance Publications.....	18
“Your Comments are Important”.....	18

(This page intentionally left blank)

INTRODUCTION

The purpose of this Informed Compliance Publication (ICP) is to identify the laws and regulations that are to be adhered to by the trade community engaged in 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 U.S. Customs and Border Protection (CBP).

Specifically, in this Publication, CBP will summarize:

- The Passenger Vessel Services Act (“PVSA”)
- CBP Regulations
- Exceptions
- Waivers

Background

For over 200 years, the United States Customs Service¹, now CBP, has been responsible for enforcing and administering laws and regulations² 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.

Federal laws protecting U.S. shipping date back to the First Congress in 1789. American shipping in the United States coastwise³ trade has been protected from foreign competition, in order to encourage the development of an American merchant marine, for both national defense and commercial purposes. As a result, all vessels engaged in the coastwise trade have been required to be coastwise-qualified (i.e., U.S.-built, owned and documented).

The coastwise law governing the transportation of passengers was first established by § 8 of the Passenger Vessel Services Act (PVSA) of June 19, 1886, 24 Stat. 81; as amended by § 2 of the Act of February 17, 1898, 30 Stat. 248, formerly codified at 46 U.S.C. App. § 289 (now codified at 46 U.S.C. § 55103). That statute provided that “no foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of \$200 [now \$300, as promulgated in Treasury Decision (T.D.) 03-11 (March 21, 2003) pursuant to the

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

² Customs (now CBP) has always enforced coastwise laws except for a 58-year period (1884-1942) when the responsibility resided with the former Bureau of Navigation under the Treasury and Commerce.

³ In this context, the term “coastwise” refers to vessels engaged in domestic trade, or those traveling regularly from port to port in the United States. BLACK’S LAW DICTIONARY 233 (5th ed. 1979).

Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note] for each passenger so transported and landed.”

Since 1898, CBP has enforced the PVSA restrictions. See T.D. 19012 (Feb. 26, 1898). To that end, CBP’s longstanding historical practice of interpreting the PVSA has focused on the primary purpose or objective of the voyage.

Passenger vessel transportation between United States ports has historically been viewed to be part of the coastwise trade after the enactment of the PVSA. This view is premised on the concepts of continuity of the voyage and whether its intended purpose or objective is coastwise transportation. The PVSA was held to be violated if the coastwise movement by a non-coastwise-qualified vessel was continuous or if the purpose of the trip was a coastwise voyage. See 18 O.A.G. 445, September 4, 1886; 28 O.A.G. 204, February 26, 1910; 29 O.A.G. 318, February 12, 1912; 30 O.A.G. 44, February 1, 1913; 34 O.A.G. 340, December 24, 1924; and 36 O.A.G. 352, August 13, 1930.

As stated above, the intent of the coastwise laws, including the PVSA, was to protect U.S. shipping interests by providing a “legal structure that guarantees a coastwise monopoly to American shipping and thereby promotes development of the American merchant marine.” Autolog Corp. v. Regan, 731 F.2d 25, 28 (DC Cir. 1984); see also The Grenada, 35 F.Supp. 892, 893, 1940 AMC 1601 (DC Pa 1940) (stating that the legislative aim of section 289 [now 55103] was the creation of a practical monopoly of coastwise and domestic shipping business for United States ships). The PVSA was enacted to advance the United States merchant marine and fleet by restricting the use of non-coastwise-qualified passenger vessels in United States territorial waters.

Coastwise Laws

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 coastwise-qualified vessel.

Title 46 of the United States Code covers the coastwise laws, including the PVSA, that are administered by CBP. Specifically, the PVSA was formerly found in 46 U.S.C. App. 289. However, pursuant to Public Law 109-304, 120 Stat. 1632, enacted on October 6, 2006, Title 46, United States Code (U.S.C.), setting forth the shipping laws was substantially reorganized and recodified. Consequently, the PVSA is now codified at 46 U.S.C. § 55103.

THE PVSA

Transportation of Passengers—46 U.S.C. § 55103

The PVSA (46 U.S.C. § 55103), provides that the transportation of passengers between U.S. points is reserved for coastwise-qualified vessels. Pursuant to section 55103, “a

vessel may not 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— (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.”

Consequently, foreign-flag vessels are prohibited from engaging in the coastwise trade. In addition, the same prohibitions apply to U.S.-flag vessels that do not have a coastwise endorsement on their document, i.e., are not coastwise-qualified due to being foreign-built or not having the requisite percentage of U.S. ownership.

Who is a Passenger?

Generally, a passenger is any person carried on a vessel who is **not directly and substantially** connected with the operation of such vessel, her navigation, ownership, or business. See 19 CFR § 4.50(b) and the *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. For example, CBP has held that individuals engaged in charter party fishing are passengers, as are travel agents, marketing and sales personnel, and conventioners, among others. Further examples are in the below table.

A non-coastwise qualified vessel proposed the transportation of an individual that was to provide a lecture regarding the history of wine and wines of the Pacific Northwest and the United States. CBP held that the foregoing individual was a "passenger" within the meaning of 19 C.F.R. § 4.50(b) and the coastwise transportation of that passenger would be in violation of 19 U.S.C. § 55103.	HQ H054243 , dated March 20, 2009
A cruise line proposed transporting individuals aboard a vessel to "embark as clothing consultants and . . . give advice about fashion for the passengers onboard." CBP held these individuals were "passengers" within the meaning of 46 U.S.C. § 55103 insofar as these "fashion consultants" were not "directly and substantially" connected with the operation, navigation, ownership or business of the vessel itself.	HQ H011874 , dated May 31, 2007
A cruise line proposed transporting two marketing employees of the cruise line and independent contractors, who were shooting, producing, and performing in a promotional video. CBP held that marketing employees and contractors were "passengers" because none of their activities were "directly and substantially" related to the operation or business of the vessel itself.	HQ H008038 , dated March 9, 2007
Shipping agency trainees transported aboard a vessel "to observe daily life on a vessel and gain better insight about what their colleagues [that] work on a vessel actually do" or "observe what goes on during a vessel's voyage" were "passengers" within the meaning of 46 U.S.C. § 55103 insofar as the trainees were not "directly and substantially" connected with the operation, navigation, ownership or business of the vessel itself.	HQ H008513 , dated March 21, 2007
A terminal operations staff member who is transported onboard 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 is a "passenger" within the meaning of 46 U.S.C. § 55103 and 19 CFR § 4.50(b).	HQ H083895 , dated November 16, 2009

Who is NOT a Passenger?

In order for a person not to be considered a passenger, the connection between that person transported and the vessel must be **direct and substantial**. See the 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.

CBP has long held that workmen, technicians, or observers transported by vessel between ports of the United States are not "passengers" within the meaning of 46 U.S.C. § 55103 and 19 CFR § 4.50(b), if they are required to be onboard to contribute to the accomplishment of the operation or navigation of the vessel during the voyage or are on board because of a necessary vessel ownership or business interest during the voyage. See CBP Ruling HQ 101699 (November 5, 1975); compare with HQ 116721 (September 25, 2006), quoting HQ 101699.

In addition, cleaning crews, chefs, auditors and inspectors conducting surveys, safety and maintenance inspectors, entertainers, stagehands, and lighting and prop hands are not considered passengers within the meaning of the PVSA. Further examples are in the below table.

An individual onboard to "conduct regulatory ISM [International Safety Management]/ISPS [International Ship Port Security] audits [onboard] the vessel and to control and check various records and running procedures of the vessel" is not a "passenger" within the meaning of 46 U.S.C. § 55103 and 19 CFR § 4.50(b).	HQ H084815 , dated November 19, 2009.
Surveyors and technicians onboard to supervise engine tests as necessary are not passengers for purposes of administering 46 U.S.C. § 55103 and 19 CFR § 4.50(b).	HQ H006964 , dated February 16, 2007
Individuals onboard to conduct a pre dry-dock inspection, which consists of an inspection of the condition of the cranes, the engines, and the generators, among other things are not "passengers" within the meaning of 46 U.S.C. § 55103 and 19 CFR § 4.50(b).	HQ H081080 , dated October 22, 2009
A designer, to be transported for the purpose of overseeing the refurbishment of certain areas of the vessel – the penthouses, the café, and certain open decks, ensuring that these areas are refurbished according to the architectural plans is not a "passenger" within the meaning of 46 U.S.C. § 55103 and 19 CFR § 4.50(b).	HQ H076995 , dated September 28, 2009
A Manager, Marine Hotel Operations traveling onboard to conduct an overall operational review, including food and beverage service, entertainment, housekeeping, and accounting is not a "passenger" within the meaning of 46 U.S.C. § 55103 and 19 C.F.R. § 4.50(b).	HQ H067177 , dated July 2, 2009

It is also well settled that the spouse and children of officers of the vessel are not passengers. See Bureau of Navigation General Letter No. 117 (May 20, 1916). See also HQ H061255 (May 19, 2009).

Furthermore, CBP has held that a vessel engaged in oceanographic research is not engaged in coastwise transportation, i.e., the researchers are not passengers. See HQ H010661 (May 4, 2007).

CBP has also held that a vessel that is used to teach individuals how to sail or navigate—and the individuals engage in that instruction while onboard—is not engaged in coastwise trade/transportation, i.e., the students are not passengers. See HQ 115361 (June 15, 2001).

Application of the PVSA

1. Where Does the PVSA Apply?

The PVSA applies to the United States, including the island territories and possessions of the United States, e.g., Puerto Rico. See 46 U.S.C. § 55101(a). However, the coastwise laws generally do not apply to the following: 1) American Samoa; 2) the Northern Mariana Islands; 3) Canton Island; or 4) the Virgin Islands. See 46 U.S.C. § 55101(b).

2. U.S. Territorial Waters

The territorial waters of the United States consist of the territorial sea, defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline, in cases where the baseline and coastline differ. This includes all inland navigable waterways. In interpreting the PVSA, CBP has consistently ruled that a point in the United States territorial waters is a point in the United States embraced within the coastwise laws.

3. Outer Continental Shelf

In order for an activity to constitute coastwise trade, there must be a transportation between “coastwise points.” In addition to the U.S. territorial waters as defined above, coastwise points also include certain points on the Outer Continental Shelf (OCS):

Section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. § 1333(a); “OSCLA”), provides in part that the laws of the United States are extended to: “the subsoil and seabed of the OCS and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom...to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction within a state.”

Therefore, CBP has held that the PVSA 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 exploration operations. For example, drilling rigs located on the OCS are considered coastwise points. Similarly, floating, anchored warehouse vessels, when anchored on the OCS to supply

drilling rigs on the OCS, are also points in the U.S. for purposes of the PVSA, since they are essential to the operation of the drilling rig. See Customs Service Decisions (C.S.D.s) 81-214 and 83-52; see also, HQ 107579 (May 9, 1985). Likewise, the PVSA is extended to mobile oil drilling rigs during the period they are secured to or submerged onto the seabed of the OCS. See Treasury Decision (T.D.) 54281(1). The installation or device must be permanently or temporarily attached, and it must be used for the purpose of exploring for, developing or producing resources therefrom, in order to be considered a coastwise point. See HQ 114846, dated October 26, 1999.

Requirements: Coastwise-Qualified

1. Vessel Documentation

The 11th Act of Congress in 1789 established the documentation system for U.S. vessels, in order to regulate coastwise trade. The United States Coast Guard (USCG) issues certificates of documentation, and determines the eligibility of vessels for a coastwise endorsement to appear on such certificates.

2. Coastwise Endorsement

A vessel that is built in, documented under the laws of, and owned by citizens of the United States, and which obtains a coastwise endorsement from the USCG, is referred to as "coastwise-qualified." Specifically, the term "coastwise-qualified vessel" means a U.S.-flag vessel having a certificate of documentation with a coastwise endorsement under 46 U.S.C. § 12112.

3. Vessel Eligibility

The certificates of documentation with a coastwise endorsement issued by the USCG provide conclusive evidence of U.S. nationality and authorization for qualified vessels to engage in the coastwise trade. A vessel must meet certain eligibility requirements to qualify for a coastwise endorsement (e.g., build, ownership, etc.). These requirements are solely within the purview of the USCG.

IMPLEMENTING REGULATIONS

The applicable CBP regulations governing the PVSA are found in Title 19 of the Code of Federal Regulations (CFR), sections 4.50(b), 4.80, and 4.80a (19 CFR §§ 4.50(b), 4.80, 4.80a). They provide as follows.

Passenger defined—19 CFR § 4.50(b)

Section 4.50(b) of the CBP Regulations (19 CFR § 4.50(b)) provides that "[a] passenger within the meaning of this part is any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business."

Tonnage of Vessels entitled to engage in coastwise trade—19 CFR § 4.80

In order for any vessel of five net tons or more to engage in coastwise transportation, it must have a coastwise endorsement on its certificate of documentation. Vessels of less than five net tons may not be documented by the USCG. For those vessels to engage in coastwise transportation, they must, except for their tonnage, otherwise be entitled to be documented with a coastwise endorsement. See 19 CFR § 4.80(a)(2).

Coastwise transportation of passengers—19 CFR § 4.80a

There are three common transportation violations, set forth below, that can occur when a non-coastwise-qualified vessel transports passengers between U.S. coastwise ports.

First, a non-coastwise-qualified vessel transports a passenger directly between U.S. coastwise ports. (19 CFR § 4.80a(b)(1)). For example, a violative coastwise transportation occurs when a passenger embarks in San Francisco and is carried to Seattle, where he/she disembarks.

Second, a non-coastwise-qualified vessel transports a passenger on a voyage solely to one or more coastwise ports and the passenger disembarks or goes ashore temporarily at a coastwise port. (19 CFR § 4.80a(b)(1)). For example, a non-coastwise-qualified vessel that embarks a passenger in Los Angeles and transports him/her to one or more of the Hawaiian Islands where he/she goes ashore temporarily and returns to Los Angeles where he/she disembarks, violates the PVSA.

Third, a non-coastwise-qualified vessel transports a passenger between U.S. coastwise ports by way of a “nearby foreign port.” (19 CFR § 4.80a(b)(2)). For example, a violative transportation occurs when a non-coastwise-qualified vessel that embarks a passenger in Los Angeles, transports him/her to the Hawaiian Islands and Ensenada, Mexico then proceeds to San Diego where the passenger disembarks. Ensenada, Mexico is a “nearby foreign port” pursuant to the CBP regulations. A “nearby foreign port” is defined as “any port in North America, Central America, the Bermuda Islands, or the West Indies (including the Bahama Islands, but not including the Leeward Islands of the Netherlands Antilles, i.e., Aruba, Bonaire, and Curacao).” 19 CFR § 4.80a(a)(2).

However, there is no violation of the PVSA when a passenger is 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.” See 19 CFR § 4.80a(b)(3). For example, a non-coastwise-qualified vessel that embarks a passenger in Miami, transports him/her to Aruba, then proceeds to Key West where the passenger disembarks does not violate the PVSA. A port in Aruba is a “distant foreign port” pursuant to the CBP regulations. 19 CFR § 4.80a(a)(3).

It is important to note that a cruise itinerary may be compliant with the PVSA, but a passenger that disembarks at a port other than those designated as part of a compliant itinerary may still cause the vessel/carrier to violate the PVSA depending on where the passenger embarked and disembarked. For example, a passenger that embarks in Seattle, Washington on a round trip itinerary that includes Alaska and disembarks early in Juno, Alaska will cause the vessel/carrier to violate the PVSA, regardless of the reason for the early departure from the cruise ship.

PENALTY

The statute, 46 U.S.C. § 55103(b), provides in pertinent part that the penalty for violating the PVSA is \$300 for each passenger transported and landed.

The applicable CBP regulation regarding penalties for violating the PVSA is found in 19 CFR § 4.80(b)(2), which provides that “[t]he penalty imposed for the unlawful transportation of passengers between coastwise points is \$300 for each passenger so transported and landed (...as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990).” However, when the violation is the result of a vessel in distress, CBP may remit without payment any penalty which arises for violation of the coastwise laws if there is satisfactory evidence that the violation occurred as a direct result of an arrival of the transporting vessel in distress. See 19 CFR § 171.11(c).

We note here, that the penalty of \$300 is assessed against the vessel operator or carrier that has provided the unlawful transportation. Thus, for example, a passenger who embarked on a non-coastwise-qualified vessel at Baltimore, Maryland for a Caribbean cruise scheduled to return and disembark at Baltimore, Maryland could not disembark in Miami, Florida for medical or emergency reasons without there being a violation of the PVSA. The penalty for this unlawful transportation would be assessed against the vessel/carrier.

EXCEPTIONS

Transportation of Passengers Between Puerto Rico and Other U.S. Ports—46 U.S.C. § 55104

An exception to the PVSA permits non-coastwise-qualified vessels (vessels not qualified to engage in the coastwise trade) to transport passengers on voyages between ports in Puerto Rico and other U.S. ports until qualified U.S. vessels are available.

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

Section 55121(a) provides in pertinent part that: “[u]ntil passenger service is established by vessels of the United States between the port of Rochester, New York, and the port

of Alexandria Bay, New York, the Secretary of Homeland Security may issue annually permits to Canadian passenger vessels to transport passengers between those ports.” Thus, Canadian vessels holding such a permit are not subject to the restrictions of the PVSA.

Section 55121(b) provides that the prohibitions of the coastwise laws do not apply to the transportation 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 U.S. is available to provide such transportation.

Cruise to Nowhere

A “cruise to nowhere” is not considered coastwise transportation. A “cruise to nowhere” is the transportation of passengers from a U.S. point to the high seas 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. See 29 O.A.G. 318 (1912).

WAIVER AUTHORITY—46 U.S.C. § 501

National Defense

The PVSA can only be waived in the interest of national defense, pursuant to 46 U.S.C. § 501. 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 PVSA to the extent the Secretary of Defense considers such a waiver necessary in the interest of national defense. In this instance, CBP, pursuant to a delegation of authority from the Secretary of DHS shall grant the waiver. For all other waiver requests, 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 (46 U.S.C. § 501(b)). It should be noted that in this latter instance, P.L. 110-417, section 3510, (122 Stat. 4356, enacted on October 14, 2008), amended § 501(b), to require that the Maritime Administrator be consulted regarding the non-availability of qualified United States flag capacity to meet national defense requirements, before the Secretary of DHS grants the waiver request.

Waiver Request

A waiver request should include the purpose for which waiver is sought, port(s) involved, and estimated period of time for which the waiver is sought.

Requests to waive the provisions of the coastwise laws administered by CBP should be referred to the Cargo Security, Carriers & Immigration Branch, Regulations and Rulings,

Office of International Trade, U.S. Customs and Border Protection, Mint Annex, 799 9th Street, NW, Washington, DC 20229-1179, phone (202) 325-0030, fax (202) 325-0152.

Coordination with Other Agencies

CBP's enforcement and administration of the PVSA require coordination with other interested agencies, such as the Maritime Administration (MARAD) of the U.S. Department of Transportation, the USCG, and the U.S. Department of Defense. As mentioned above, the USCG determines vessel eligibility for coastwise endorsement and issues certificates of documentation. MARAD monitors and assesses the operating status of U.S.-flag vessels, and advises CBP on such U.S. vessel availability. Similarly, the U.S. Department of Defense ascertains whether a waiver request is in the interest of national defense. If the Department of Defense is the requesting party for a waiver, CBP grants the waiver request. For all other requests, CBP makes a recommendation to the Secretary of DHS who is the deciding authority on the waiver request.

ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, 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 on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site 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 is designed to help educate international travelers.

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

Customs Regulations

The current edition of Customs and Border Protection Regulations of the United States is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. 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 on-line access to the Federal Register may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. 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. Each year, the Government Printing Office publishes bound volumes of the Customs Bulletin. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the “*What Every Member of the Trade Community Should Know About...*” series. Check the Internet web site <http://www.cbp.gov> for current publications.

“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 OR 1-800-NO-DROGA



Visit our Internet web site: <http://www.cbp.gov>