

From: [ed welch](#)
To: [Passengervesselcharters](#); [Lessley, Lucinda \(MARAD\)](#)
Subject: Re "Passenger Vessel Charters" from Passenger Vessel Association
Date: Sunday, August 29, 2021 5:34:06 PM

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August 29, 2021

Ms. Lucinda Lessley
Acting Administrator
U.S. Maritime Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Ms. Lessley:

On March 2, 2021, the Passenger Vessel Association (PVA) – the national trade association representing owners and operators of U.S.-flagged passenger vessels of all types, including coastwise-qualified overnight cruise vessels – wrote to you regarding section 3502(b) of Public Law 116-283 (the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021). The Maritime Administration (MARAD) subsequently posted on its website a document entitled “Passenger Vessel Charter.” This follow-up letter is in response to that posted document.

PVA believes that the posted document fails to comply with the letter, intent, and spirit of section 3502(b). PVA urges further action, as discussed below, before MARAD undertakes “final action,” as required by section 3502(b).

Section 3502(b) states:

(b) FOREIGN VESSEL CHARTERS FOR PASSENGER VESSELS.—For fiscal year 2020 and each subsequent fiscal year, the Maritime Administrator shall make publicly available on an appropriate website of the Maritime Administration— (1) a detailed summary of each request for a determination, approval, or confirmation that a vessel charter for a passenger vessel is encompassed by the general approval of time charters issued pursuant to section 56101 of title 46, United States Code, or regulations prescribed pursuant to such section; and (2) the final action of the Administration with respect to such request, after the provision of notice and opportunity for public comment.

PVA characterizes the section 3502(b) statutory requirement as the “disclosure, transparency, and public comment on time charters of passenger vessels” provision.

The purpose of section 3502(b) is to open up to the public the Maritime Administration’s process of reviewing and responding to an outside party’s request to the agency to confirm that a charter of a passenger vessel to a non-citizen falls within the general approval of time charters pursuant to title 46 *Code of Federal Regulations* section 221.13(a).

Federal law permits a coastwise-qualified passenger vessel to be time chartered to a non-citizen under certain conditions, but the agreement must be carefully constructed to ensure that operational control of the vessel does not transfer to the non-citizen; this would be a violation of the law's mandate that a coastwise-qualified passenger vessel must be operated only by a U.S. citizen.

According to the posted "Passenger Vessel Charter: document, the "time charter" between the U.S. citizen owner and the non-citizen is for a term of 8 years, renewable at the sole option of the non-citizen for an additional 12 years, and then further renewable at the option of the non-citizen for two more terms of 5 years. In other words, if it so wishes, the non-citizen will have the legal right to operate the vessel under its name for 30 years.

Can the Maritime Administration truly characterize this arrangement as a permissible time charter? Long-standing U.S. cabotage policy reserves the carriage of passengers in the domestic trades to vessels operated by U.S. citizens. Is it consistent with this policy to enable a non-citizen to market and operate a passenger vessel in domestic commerce for up to 30 years?

Five members of the Passenger Vessel Association have written you stating their opposition to the Maritime Administration's action thus far in this particular instance. These U.S.-citizen companies adhere to all U.S. laws for carriage of passengers in domestic commerce. They deserve assurance that this particular transaction fully complies with long-standing laws and policies. MARAD's actions thus far do not provide that assurance and fail to satisfy the letter, intent, and spirit of section 3502(b) of Public Law 116-283. Based on the limited information summarized by MARAD, and lacking a clear regulatory standard for judging the proposed transaction, it is impossible to tell whether the arrangement is a permissible time charter or an impermissible bareboat/demise charter,

The Passenger Vessel Association urges the Maritime Administration to:

- Promulgate a clear regulatory standard for differentiating time charters from bareboat/demise charters to non-citizens in the domestic cruise industry (there is no indication that MARAD has such a standard presently). There should be a public comment period on the proposed regulatory standard; and
- After finalizing the regulatory standard, apply it to the proposed charter, with public disclosure of the agency's analysis of the application of the standard to the proposed charter. All this should occur prior to "final action," as required by section 3502(b).

The Passenger Vessel Association welcomes new entrants into the domestic passenger cruise industry. However, all domestic operators must adhere to the same rules and regulations. It is the Maritime Administration's affirmative responsibility to ensure this is the case and to assure the public of that fact. Thank you.

Sincerely,

Ed Welch

Edmund B. Welch
Legislative Director
Passenger Vessel Association
103 Oronoco Street, Suite 200
Alexandria, VA 22314
Cell Phone: 571-275-2066
Fax: 703-518-5151
Email: ewelch@passengervessel.com
www.passengervessel.com