

U.S. Department of Homeland Security Washington, DC 20229
U.S. Customs and Border Protection

HQ H249067

March 6, 2014

OT:RR:BSTC:CCR H249067 KLQ

CATEGORY: Carriers

Jeanne M. Grasso, Esquire Blank Rome, LLP Watergate, 600 New Hampshire Avenue, N.W.

Washington, D.C. 20037

RE: 46 U.S.C. § 55102; 19 C.F.R. § 4.80b(a); New and Different Product; Conventional Regular Gasoline Blendstock and Reformulated Blendstock for Oxygenate Blending.

Dear Ms. Grasso:

This is in response to your December 20, 2013, ruling request on behalf of your client, [] and its subsidiaries, in which you request a ruling determining whether the proposed transportation by a non-coastwise-qualified vessel would constitute a violation of 46 U.S.C. § 55102. Our decision follows.

FACTS

The following facts are from your ruling request, emails to this office dated January 26, 2014- January 31, 2014, and the Laboratories and Scientific Services Directorate (LSSD) memoranda. Your client proposes to transport Heavy Naphtha, Light Naphtha, Raffinate, Reformate, Alkylate, Butane, and Catalytic-cracked gasoline ("components") from points in the United States to a marine terminal in The Bahamas. While in The Bahamas, the components will undergo a blending operation to produce Reformulated Blendstock for Oxygenate Blending ("RBOB") and Conventional Regular Gasoline Blendstock ("CBOB"). The RBOB and CBOB will be transported back to the United States by non-coastwise-qualified vessels. Your client provided this Office with its import and export specifications for these transportations.

ISSUE

Whether based on the import and export specifications provided, the proposed blending operations would result in the creation of a "new and different product" within the meaning of 19 C.F.R. § 4.80(b)a, such that the proposed transportation by non-coastwise-qualified vessels would not be in violation of 46 U.S.C. § 55102.

LAW AND ANALYSIS

Pursuant to 46 U.S.C. § 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 has a coastwise endorsement.

Under 19 C.F.R. § 4.80b(a):

A coastwise transportation of merchandise takes place, within the meaning of the coastwise laws, when merchandise laden at a point embraced within the coastwise laws ("coastwise point") is unladen at another coastwise point, regardless of the origin or ultimate destination of the

merchandise. However, merchandise is not transported coastwise 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.

CBP has consistently held that in order for fuel oil to qualify as a new and different product, it must undergo a change in ASTM grade. In HQ **H101115** (Apr. 23, 2010), CBP stated that in adherence to industry standards, when fuel oil changes American Society for Testing Material (ASTM) grades, it becomes a new and different product. In that case, CBP found that the transportation would not be in violation of 46 U.S.C. § 55102 because the merchandise was imported at one ASTM grade and exported at another ASTM grade. See also HQ **H190675** (Jan. 20, 2012); HQ **116650** (June 9, 2006); HQ **116230** (May 28, 2004); HQ **112895** (Feb. 2, 1994); HQ **111846** (Apr. 28, 1992).

We have sought and received advice from the LSSD as to whether the processing you describe results in a new and different product. LSSD acknowledged that while there are no ASTM specifications for RBOB and CBOB, there are published commercial grade specifications for these products. Based on the information provided, which includes specifications and blending processes, and despite the inapplicability of ASTM specifications, LSSD has concluded that the blending process you propose would result in a new and different product within the meaning of 19 C.F.R. § 4.80b(a). LSSD determined that the components leaving the United States are “ungraded petroleum blendstocks used in the production of gasoline and other fuel oil products,” while the product leaving The Bahamas “meets specific commercial grades and Environmental Protection Agency (EPA) requirements needing only the addition of 10% ethanol to be used as motor fuel.” In addition, LSSD indicated that the returning RBOB and CBOB must meet the following conditions:

Each product must meet the EPA fuel certification standards for RBOB or CBOB (40 CFR § 80) and meet the ASTM D 4814 requirements for one of the volatility classes of motor fuel after blending with 10% ethanol; In the case of RBOB, each product must meet all of the requirements for one of the corresponding published “F grade” specifications (F1, F2, F3, F4, or F5) as listed in the Colonial Pipeline Shippers Manual Product Specifications (Section 3) that is in effect at the time of importation; In the case of CBOB, each product must meet all of the requirements for one of the corresponding published “A grade” specifications (A1, A2, A3, A4, or A5) as listed in the Colonial Pipeline Shippers Manual Product Specifications (Section 3) that is in effect at the time of importation; Each product must meet all of the specifications provided in the [] spreadsheet attachment labeled “Component Specifications v3” for the corresponding RBOB (VOC controlled), RBOB (non-VOC controlled), or CBOB product; and No further processing is allowed with the exception of blending with 10% ethanol.

Therefore, pursuant to 19 C.F.R. § 4.80b(a), and in adherence to both the LSSD conditions outlined above and the import and export specifications provided, the proposed transportation would not be in violation of 46 U.S.C. § 55102 because the non-coastwise-qualified vessels would transport the subject components from points in the United States to The Bahamas and then transport a new and different product from The Bahamas to a point in the United States.

HOLDING

Based on the import and export specifications provided, the proposed blending operations would result in the creation of a new and different product within the meaning of 19 C.F.R. § 4.80(b)a, such that the proposed transportation by non-coastwise-qualified vessels would not be a violation

of 46 U.S.C. § 55102.

Sincerely,
Lisa L. Burley Chief/Supervisory Attorney-Advisor Cargo Security, Carriers and Restricted
Merchandise Branch Office of International Trade, Regulations & Rulings U.S. Customs and
Border Protection



U.S. Customs and Border Protection

HQ H259293

January 29, 2015

OT:RR:BSTC:CCR H259293 KLQ

CATEGORY: Carriers

Matthew J. Thomas, Esquire
Blank Rome, LLP
Watergate, 600 New Hampshire Avenue, N.W.
Washington, D.C. 20037

RE: 46 U.S.C. § 55102; 19 C.F.R. § 4.80b(a); New and Different Product; Proposed Transportation of Alkylate, Reformate, Light Naphtha, Heavy Naphtha, Raffinate, Butane, Catalytic-Cracked Gasoline and Heavy Aromatics; []; Conventional Regular Gasoline Blendstock (A Grade-CBOB); Conventional Premium Gasoline Blendstock (D Grade-Premium CBOB); Reformulated Regular Gasoline Blendstock (F Grade-RBOB); Reformulated Premium Gasoline Blendstock (H Grade-RBOB); 87 Octane Index Conventional Gasoline (M Grade-Conventional); and 93 Octane Index Conventional Gasoline (V Grade-Premium).

Dear Mr. Thomas:

This is in response to your November 12, 2014, ruling request on behalf of your client, [],¹ in which you request a ruling determining whether the proposed transportation by non-coastwise-qualified vessels, the [] and the [] (“vessels”), would constitute a violation of 46 U.S.C. § 55102. Our decision follows.

FACTS

The following facts are from your ruling request, dated November 12, 2014. Your client proposes to transport Alkylate, Reformate, Light Naphtha, Heavy Naphtha, Raffinate, Butane, Catalytic-Cracked Gasoline and Heavy Aromatics by non-coastwise-qualified vessels from [

¹ In your request, you have asked this office for “confidential treatment” of the name of your client and the import and export specifications. If this office receives a Freedom of Information Act request for your submission, Customs and Border Protection Regulations (19 C.F.R. § 103.35, et seq.) regarding the disclosure of business information provide that the submitter of business information will be advised of receipt of a request for such information whenever the business submitter has in good faith designated the information as commercially or financially sensitive information. We accept your request for confidential treatment as a good faith request.

] to a marine terminal in [] on or about []. While in [], the components will undergo a blending operation to produce CBOB, RBOB, 87 Octane Index Conventional Gasoline (M Grade-Conventional) and 93 Octane Index Conventional Gasoline (V Grade-Premium). Non-coastwise-qualified vessels will transport the RBOB and CBOB to []

[]. Your client provided this office with its import and export specifications for these transportations.

ISSUE

Whether based on the import and export specifications provided, the proposed blending operations would result in the creation of a “new and different product” within the meaning of 19 C.F.R. § 4.80b(a), such that the proposed transportation by non-coastwise-qualified vessels would not be in violation of 46 U.S.C. § 55102.

LAW AND ANALYSIS

Pursuant to 46 U.S.C. § 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 has a coastwise endorsement.

(emphasis added).

Under 19 C.F.R. § 4.80b(a):

A coastwise transportation of merchandise takes place, within the meaning of the coastwise laws, when merchandise laden at a point embraced within the coastwise laws (“coastwise point”) is unladen at another coastwise point, regardless of the origin or ultimate destination of the merchandise. However, merchandise is not transported coastwise 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.

(emphasis added).

We have sought and received advice from the Laboratories and Scientific Services Directorate (“LSSD”) as to whether the processing you describe results in a new and different product. The LSSD determined that the blending process you propose would result in a new and different product within the meaning of 19 C.F.R. § 4.80b(a) for the Alkylate, Reformate, Light Naphtha, Heavy Naphtha, Raffinate, Butane, Catalytic-Cracked Gasoline and Heavy Aromatics. The RBOB, CBOB, and conventional gasoline products returning to the [] are “new and different products” as compared to the blendstock components which left the []. In addition, the LSSD indicated that, for purposes of this opinion, the returning RBOB, CBOB, and conventional gasoline products must meet the following conditions:

1) Each RBOB or CBOB product must meet the EPA fuel certification standards for RBOB or CBOB [] and meet the [] after blending with 10% ethanol. Each conventional gasoline will be required to meet the [];

2) In the case of RBOB, each product must meet all of the requirements for one of the corresponding published [] as listed in the [] that is in effect at the time of importation;

3) In the case of CBOB, each product must meet all of the requirements for one of the corresponding [] as listed in the [] that is in effect at the time of importation;

4) In the case of conventional gasoline, each product must meet all of the requirements for one of the corresponding [] as listed in the [] that is in effect at the time of importation.

5) No further processing is allowed for the RBOB or CBOB with the exception of blending with 10% ethanol.

Pursuant to 19 C.F.R. § 4.80b(a), and in adherence to the LSSD findings, the proposed transportation would not be in violation of 46 U.S.C. § 55102 because the non-coastwise-qualified vessels would transport the subject components from points in the [] to [] and then transport the new and different products from [] to a point in the [].

HOLDING

Based on the import and export specifications provided, the proposed blending operations would result in the creation of a new and different product within the meaning of 19 C.F.R § 4.80b(a) with regard to the Alkylate, Reformate, Light Naphtha, Heavy Naphtha, Raffinate, Butane, Catalytic-Cracked Gasoline and Heavy Aromatics; therefore, the proposed transportation by non-coastwise-qualified vessels would not be in violation of 46 U.S.C. § 55102.

Sincerely,

Lisa L. Burley
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Cargo Security, Carriers and Restricted Merchandise Branch
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