

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

HQ **H254877**

August 4, 2014

OT:RR:BSTC:CCR **H254877** KLQ

CATEGORY: Carriers

Matthew D. Anderson Charter Brokerage 22762 Westheimer Parkway, Suite 530 Katy, Texas 77450
RE: 46 U.S.C. § 55102; 19 C.F.R. § 4.80b(a); New and Different Product; Proposed Transportation of Undenatured Ethanol; []; Conventional Regular Gasoline Blendstock (“CBOB”) and Reformulated Blendstock for Oxygenate Blending (“RBOB”); fuel grade denatured ethanol, ASTM 4806.

Dear Mr. Anderson:

This is in response to your June 24, 2014, ruling request on behalf of your client, [], 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 supplemental ruling request, dated July 17, 2014 and the Customs and Border Protection (“CBP”) Laboratories and Scientific Services Directorate (“LSSD”) memoranda. Your client proposes to transport undenatured ethanol by non-coastwise-qualified vessels from [] to a marine terminal in []. While in [], the components will undergo a denaturing process thru the addition of RBOB and CBOB to produce fuel grade denatured ethanol. Non-coastwise-qualified vessels will transport the fuel grade denatured ethanol 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. § 4.80(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.
(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 LSSD as to whether the processing you describe results in a new and different product. The LSSD determined that the difference between the undenatured ethyl alcohol transported from the United States and the fuel grade denatured ethyl alcohol transported to [] is one of grade and not of chemical or structural difference. The LSSD found that: (1) the two products are very similar differing only in the type and amount of impurity in the product; (2) the product transported from the United States and the product transported to [] have chemical structures identical to that of the predominant component; (3) the products differ only in the small amount of denaturant added to the fuel grade denatured ethyl alcohol; and (4) the Harmonized Tariff Schedule at the four digit level classifies both products as ethyl alcohol. Therefore, the LSSD has concluded that the proposed blending operation would not create a new and different product.

Pursuant to 19 C.F.R. § 4.80b(a), and in adherence to the LSSD findings, the proposed transportation would be in violation of 46 U.S.C. § 55102 because the non-coastwise-qualified vessels would transport the same product from [] to [] via [].

HOLDING

Based on the import and export specifications provided, the proposed blending operations would not result in the creation of a new and different product within the meaning of 19 C.F.R § 4.80(b)a; therefore, the proposed transportation by non-coastwise-qualified vessels would 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 and Rulings U.S. Customs and Border Protection

Print this document