

U.S. Department of Homeland Security Washington, DC 20229
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, [], 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 [] 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 Chief/Supervisory Attorney-Advisor Cargo Security, Carriers and Restricted Merchandise Branch Office of International Trade, Regulations and Rulings U.S. Customs and Border Protection

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