The maritime cabotage law governing the transportation of passengers was first established by section 6 of the Passenger Vessel Services Act of June 19, 1886 (the “PVSA”), 24 Stat. 81; as amended by section 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 T.D. 03–11 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note) for each passenger so transported and landed.

The intent of the maritime cabotage laws, including the PVSA, was to provide 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 Granada, 35 F. Supp. 892, 893, 1940 AMC 1601 (DC Pa 1940) (stating that the legislative aim of section 289 (now 55102) was the creation of a practical monopoly of coastwise and domestic shipping business for United States ships). In other words, the PVSA was enacted to advance the United States merchant marine and fleet by restricting the use of foreign-owned/flagged passenger vessels in United States territorial waters.

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 was coastwise transportation. In other words, the PVSA was held to be violated if the coastwise movement 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 16, 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.)

The CBP regulations promulgated pursuant to the PVSA are found at section 4.80a of title 19 of the Code of Federal Regulations (19 CFR 4.80a) and are reflective of the above cited Office of the Attorney General decisions. These regulations provide, among other things, that a non-coastwise-qualified vessel which “embarks” a passenger at a port in the United States embraced within the coastwise laws (a “coastwise port”) will be deemed to have landed that passenger in violation of the PVSA if the passenger “dismarks” at a different coastwise port on a voyage to one or more coastwise ports and a “nearby foreign port or ports” (as defined in 19 CFR 4.80(a)(2)); see also 19 CFR 4.80(a)(3)). This is consistent with what is defined as going on board a vessel for the duration of a specific voyage, and leaving a vessel at the conclusion of a specific voyage, respectively. (See 19 CFR 4.80(a)(4).)

The references in section 4.80a to “nearby foreign ports” (defined in 19 CFR 4.80(a)(2)) are the results of attempts by CBP to apply an Office of the Attorney General’s opinion dated February 26, 1910 (26 O.A.G. 204). In that case, a U.S. flag passenger vessel transported 615 passengers on a voyage around the world, beginning in New York and concluding in San Francisco. The Attorney General opined that since the primary object of the voyage was to visit various parts of the world on a pleasure tour returning home via California, and not to be transported in domestic commerce, the transportation was not in violation of the PVSA.

The 1910 Attorney General’s opinion was extended to voyages that included foreign ports other than nearby foreign ports. (See Treasury Decision (T.D.) 68–285 (33 FR 16558), November 14, 1968.) However, voyages solely to one or more coastwise ports have always been considered predominantly coastwise. Therefore non-coastwise-qualified vessels engaging in such a voyage where passengers temporarily go ashore at a coastwise port have been deemed to have violated the PVSA.

III. Current Law and Policy

Pursuant to Public Law 109–304, 120 Stat. 1632, enacted on October 6, 2006, Title 46, United States Code, was substantially reorganized and recodified. Consequently, the PVSA is now codified at 46 U.S.C. 55103 and provides that no vessel shall transport passengers on a voyage to one or more coastwise ports and a nearby foreign port or ports (but no other foreign port) and the passenger disembarks at a coastwise port other than the port of embarkation. (19 CFR 4.80a(b)(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. (19 CFR 4.80a(b)(1)).

To reiterate, the applicable CBP regulations provide that the PVSA is violated when 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)). Furthermore, a violation of the PVSA also occurs when a non-coastwise-qualified vessel transports a passenger on a voyage to one or more coastwise ports and a nearby foreign port or ports (but no other foreign port) and the passenger disembarks at a coastwise port other than the port of embarkation. (19 CFR 4.80a(b)(2)).

The U.S. Department of Transportation Maritime Administration (MARAD) has requested that CBP take action to ensure enforcement of the PVSA. MARAD has asked CBP to address the recent activities of foreign-flag, as well as U.S.-flag, passenger vessels in the Hawaiian Islands that are imposing economic hardship on the operations of coastwise-qualified cruise ship operators.

In April of 2007, the operator of the three U.S.-flag cruise vessels operating solely in Hawaii pursuant to the 2003 Act announced their intent to withdraw the PRIDE OF HAWAII from the Hawaii market and redeploy her to Europe. The operator intends to re-flag the vessel to foreign registry, directly resulting in the loss of over 1,100 crewmember jobs.

In 2003, Congress enacted Public Law 108–7, Division B, Title II, Section 211, for the purpose of revitalizing the oceangoing U.S.-flag cruise industry in Hawaii (the “2003 Act”). Three oceangoing U.S.-flag cruise ships, PRIDE OF ALOHA, PRIDE OF AMERICA and PRIDE OF HAWAII, were documented with coastwise privileges pursuant to the 2003 Act. These vessels entered regular service in Hawaii in 2004, 2005 and 2006, respectively, and pursuant to the express language of the 2003 Act, are limited in their operation to providing "**regular service**" between the islands of Hawaii **and** any port not considered a distant foreign port.

The CBP regulations promulgated pursuant to the PVSA are set forth in 19 CFR 4.80a and have remained unchanged throughout both the recodification of Title 46 of the United States Code and the enactment of the 2003 Act. That a violation of the PVSA occurs when passengers “embark” (board a vessel for the duration of a voyage) a non-coastwise-qualified vessel at one U.S. port, and “dismark” (leave the vessel at the conclusion of a voyage) at a different U.S. port, unless they proceed with the vessel to a “distant foreign port” (i.e., any port not considered a “nearby foreign port” which is defined as any port located in North America, Central America, Bermuda, or the West Indies including the Bahamas). Currently, these regulations do not contain specific criteria for non-coastwise-qualified vessels on itineraries including U.S. ports and either “nearby” or “distant” foreign ports in order for such foreign port calls to be compliant with the PVSA.

IV. Request From MARAD To Provide Guidance

The U.S. Department of Transportation Maritime Administration (MARAD) has requested that CBP take action to ensure enforcement of the PVSA. MARAD has asked CBP to address the recent activities of foreign-flag passenger vessels in the Hawaiian Islands that are imposing economic hardship on the operations of coastwise-qualified cruise ship operators.

In April of 2007, the operator of the three U.S.-flag cruise vessels operating solely in Hawaii pursuant to the 2003 Act announced their intent to withdraw the PRIDE OF HAWAII from the Hawaii market and redeploy her to Europe. The operator intends to re-flag the vessel to foreign registry, directly resulting in the loss of over 1,100 crewmember jobs. The primary reason cited for this decision is the rapid increase in foreign-flag competition entering the Hawaii market.
from the West Coast. This competition is evidenced in published cruise itineraries of foreign-flag carriers offering a variety of round trip cruises that depart from a U.S. port, call at several Hawaiian ports, then proceed to Ensenada, Mexico for a brief period, usually in the early morning, and ultimately return to the original U.S. port of embarkation where the passengers disembark to complete their cruise. These cruises are often marketed as “Hawaii cruises” and except for the brief stop in the nearby foreign port of Ensenada, are purely coastwise in nature. It is these cruise itineraries that pose an imminent threat to the two remaining U.S.-flagged, coastwise endorsed passenger vessels that, pursuant to the 2003 Act, are currently engaging in cruise itineraries that include only ports of call within the Hawaiian Islands.

V. Preliminary Notice

In response to MARAD’s concerns, CBP sent letters to two carriers known to operate the itineraries in question, as well as to the Cruise Lines International Association, Inc., stating that CBP believes that these itineraries are contrary to the PVSA because it appears that the primary objective of the Ensenada stop is evasion of the PVSA. The letters further indicated that CBP is taking steps to publish this position.

VI. CBP’s Proposed Interpretive Rule

Accordingly, in this document, CBP is proposing to provide that cruise itineraries for non-qualified coastwise vessels which allow passengers to board at a U.S. port, call at several Hawaiian ports, proceed to a foreign port or ports for a brief period, and then ultimately return to the original U.S. port of embarkation for disembarkation are not consistent with the PVSA and the regulations promulgated pursuant thereto. Specifically, CBP interprets a voyage to be “solely to one or more coastwise ports” even where it stops at a foreign port, unless the stop at the foreign port is a legitimate object of the cruise. CBP will presume that a stop at a foreign port is not a legitimate object of the cruise unless:

1. The stop lasts at least 48 hours at the foreign port;
2. The amount of time at the foreign port is more than 50 percent of the total amount of time at the U.S. ports of call; and
3. The passengers are permitted to go ashore temporarily at the foreign port.

Accordingly, CBP proposes to adopt an interpretive rule under which it will presume that any cruise itinerary that does not include a foreign port call that satisfies each of these three criteria constitutes coastwise transportation of passengers in violation of 19 CFR 4.80a(b)(1).


W. Ralph Basham,
Commissioner, Customs and Border Protection.

BILLING CODE 9111–14-P

DEPARTMENT OF THE TREASURY
Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9
[Notice No. 76]
RIN 1513–AB49

Proposed Establishment of the Leona Valley Viticultural Area (2007R–281P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the 13.4 square mile “Leona Valley” viticultural area in the northeast part of Los Angeles County, California. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on this proposed addition to our regulations.

DATES: We must receive written comments on or before January 22, 2008.

ADDRESSES: You may send comments on this notice to one of the following addresses:

• http://www.regulations.gov (Federal e-rulemaking portal; follow the instructions for submitting comments);

• Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments we receive about this proposal at http://www.regulations.gov under Docket No. 2007–0066. You also may view copies of this notice, all related petitions, maps, or other supporting materials, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; phone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party