SJR

12

SENATOR
GENE THERRIAULT
Mailing Address:
1292 Sadler Way, Suite 308
Fairbanks, Alaska 99701
(907) 488-0857
Fax: (907) 488-4271

Alaska State Legislature

Senate

While in session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
Fax: (907) 465-3884
SENATE DISTRICT F

TO: Senator Lesil McGuire, Chair
Senate State Affairs Committee

FROM: Senator Gene Therriault
Senate Minority Leader

DATE: February 15, 2008

RE: SJR 12 – Hearing Request

I respectfully request Senate Joint Resolution 12 be scheduled for hearing before the Senate State Affairs Committee.

The U.S. Department of Homeland Security recently released proposed interpretations to the Passenger Vessel Services Act of June 19, 1886, requiring foreign flagged vessels to spend at least 48 hours in foreign ports and that the amount of time spent in foreign ports has to be more than 50 percent of the total time spent at U.S. ports of call. As you are aware, the cruise ship and tourism industries are integral components of the state's economy and this change in interpretation will greatly impact our state's economy.

Senate Joint Resolution opposes the proposed interpretations to the Passenger Vessel by the U.S. Department of Homeland Security.

Thank you for your consideration.

Email: Senator_Gene_Therriault@legis.state.ak.us

SPECULATIVE POSITION LIMITS [1]—Continued

[In contract units]

Contract	Spot month	Single month	All months
Soybeans and Mini-Soybeans [2]	600	8,600	13,300
Wheat and Mini-Wheat [2]	600	11,100	14,500
Soybean Oil	540	6,600	8,600
Soybean Meal	720	5,500	7,100
Minneapolis Grain Exchange			
Hard Red Spring Wheat	600	11,100	14,500
New York Board of Trade			
Cotton No. 2	300	5,300	7,300
Kansas City Board of Trade			
Hard Winter Wheat	600	11,100	14,500

[1] For purposes of compliance with these limits, positions in a futures contract that shares substantially identical terms with a contract market enumerated herein, including a futures contract that is cash-settled based on the settlement price of an enumerated contract market, shall be aggregated with positions in the enumerated contract market.

[2] For purposes of compliance with these limits, positions in the regular-sized and mini-sized contracts shall be aggregated.

Issued by the Commission this November 15, 2007, in Washington, DC.

David Stawick,

Secretary of the Commission.

[FR Doc. E7-22681 Filed 11-20-07; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 4

[USCBP-2007-0098]

Hawaiian Coastwise Cruises

AGENCY: Customs and Border Protection; Department of Homeland Security.

ACTION: Proposed interpretation; solicitation of comments.

SUMMARY: This document proposes new criteria to be used by Customs and Border Protection ("CBP") to determine whether non-coastwise-qualified vessels are in violation of the Passenger Vessel Services Act (PVSA) when engaging in cruise itineraries in which passengers board at a U.S. port, the vessel calls at several Hawaiian ports, and then the vessel proceeds to a foreign port or ports for a brief period, before ultimately returning to the original U.S. port of embarkation where the passengers disembark to complete their cruise. CBP believes these itineraries are contrary to the PVSA because it appears that the primary objective of the foreign stop is evasion of the PVSA.

DATES: Comments must be received on or before December 21, 2007.

FOR FURTHER INFORMATION CONTACT: Glen E. Vereb, Cargo Security, Carriers & Immigration Branch, Office of International Trade, (202) 572-8730.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Border Security Regulations Branch, Office of International Trade, Customs and Border Protection, 1300 Pennsylvania Avenue, NW., (Mint Annex), Washington, DC 20229

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this proposed interpretation by submitting written data, views, or arguments on all aspects of the proposed interpretation. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed interpretation. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the proposed interpretation, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and docket number for this proposed interpretation. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted documents should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

II. Background

The maritime cabotage law governing the transportation of passengers was first established by section 8 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 "disembarks" 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 4.80a(a)(2); *see also* 19 CFR 4.80a(b)(2)). The terms "embark" and "disembark" are words of art which are 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 4.80a(a)(4).)

The references in section 4.80a to "nearby foreign ports" (defined in 19 CFR 4.80a(a)(2)) are the results of attempts by CBP to apply an Office of the Attorney General's opinion dated February 26, 1910 (28 O.A.G. 204). In that case, a foreign-flag 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 between ports or places in the United States, either directly or by way of a foreign port, under a penalty of $300 for each person so transported and landed, except one that: (1) Is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade, and (2) has been issued a certificate of documentation with a coastwise endorsement or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

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 transporting passengers between or among the islands of Hawaii * * *"

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. They provide 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 "disembark" (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.

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).) 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, provided the passenger has proceeded with the vessel to a distant foreign port. (19 CFR 4.80a(b)(3).)

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).

Dated: November 16, 2007

W. Ralph Basham,

Commissioner, Customs and Border Protection

[FR Doc. E7-22788 Filed 11-20-07; 8:45 am]

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); or
- 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

SARAH PALIN
GOVERNOR
GOVERNOR@GOV.STATE.AK.US

P.O. BOX 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

December 20, 2007

Mr. Glen E. Vereb
Border Security Regulations Branch
Office of International Trade
Customs and Border Protection
1300 Pennsylvania Avenue, NW (Mint Annex)
Washington, DC 20229

Re: Proposed Rule Interpretation
Docket No. USCBP - 2007 - 0098

Dear Mr. Vereb:

Please clarify immediately whether the Bureau of Customs and Border Protection's (Bureau) proposed Hawaiian Coastwise Cruises rule interpretation will apply to Alaska cruises. The State of Alaska, its residents, and its businesses are particularly worried about the provisions that would require cruise vessels to spend at least 48 hours in a foreign port and that the amount of time spent in a foreign port has to be more than 50 percent of the total amount of time spent at U.S. ports of call. These two requirements would significantly damage Alaska's tourism industry.

I believe the Customs and Border Protection's proposed rule interpretation should not apply to Alaska cruises, for reasons I will explain later in this letter. However, if the proposed rule interpretation is intended to apply to Alaska, I ask the agency to withdraw its proposal and conduct a thorough regulatory impact review. As part of such a review, the Bureau should allow the state and the public a reasonable time to submit comments. The 30-day comment period allotted for the abbreviated process now under way is woefully inadequate.

A full regulatory impact review should go beyond the minimum requirements in federal law that agencies study, consider, and interpret statutes in a way that minimizes the impact on small businesses of changes to regulations (Regulatory Flexibility Act of 1980 and Small Business Regulatory Enforcement Act of 1996). It should include a

detailed and thorough analysis of all impacts on the State of Alaska, its municipalities, particularly those serving as ports of call, and Alaska businesses.

Unfortunately, it's impossible to determine from the notice in the Federal Register whether the Bureau even intends for its new interpretation to apply to Alaska cruises. That uncertainty, which leads to the fear that the rule could apply to Alaska, has caused a lot of anguish in coastal communities dependent on cruise travelers for their economic health. I hope it turns out that the worries were unnecessary.

This proposal would create costly problems in Alaska. Business owners and communities have invested heavily in tourism ventures to serve the million-plus cruise ship passengers and crew who visit our state each year. The cruise industry is a huge part of the economy.

The industry bases its ships in Seattle and Vancouver, British Columbia, during the summer months, mostly operating seven-day cruises with stops at several Alaska ports of call. This has worked well for Alaska, for domestic and international travelers, for the cruise companies, and especially for Seattle, which now serves as homeport for almost half of the traffic. Cruise lines have already booked not only 2008 summer cruises to Alaska, but also have started with 2009 scheduling. Such a severe and short-notice change in itineraries as would be required under this proposal could create havoc for communities, travelers, and the industry.

The proposed rule interpretation, aimed at Hawaiian Coastwise Cruises, would be a dramatic and abrupt shift in policy for the Bureau of Customs and Border Protection if it were applied to Alaska cruises. Taking something that is working well and changing it -- much less on 30-days notice -- is not reasonable public policy.

The confusion over the proposal's applicability to Alaska is obvious in the public notice. The first paragraph talks only about vessels calling at Hawaiian ports, and much of Section III (Current Law and Policy) addresses the history of law and regulation as they relate specifically to Hawaii. Section IV (Request from MARAD to Provide Guidance) also talks only about Hawaiian Coastwise Cruises, and Section VI (CBP's Proposed Interpretive Rule) also refers to Hawaii. Yet what worries Alaska is that Section VI could also be read to cover Alaska cruises, and the last paragraph of Section III makes no distinction at all when it says what is and isn't a violation of the Passenger Vessel Services Act. A clarification is in order and, hopefully, could eliminate Alaska's worries.

The situation in Hawaii is different than in the Alaska cruise trade, and I believe it is reasonable to allow the continuation of Alaska cruises from Seattle with a legitimate stop at a British Columbia port -- a real port of call, where passengers stay for much of the day and disembark the ship Further, the 2003 congressional action cited in the notice of rule interpretation (Public Law 108-7, Division B, Title II, Section 211) specifically excludes Alaska and Caribbean cruises. It applies only to Hawaiian Coastwise Cruises and the vessels engaged in those cruises. All of which makes me wonder why the Bureau would even be looking at Alaska cruises? In its request that the Bureau confront the issue of Hawaiian Coastwise Cruises, the U.S. Department of Transportation Maritime Administration said recent activities of foreign-flag vessels were imposing economic hardship on coastwise-qualified, U.S.-flag vessels providing Hawaiian cruises. No such problem exists in Alaska, reinforcing the argument that there is nothing to fix in regard to Alaska cruises.

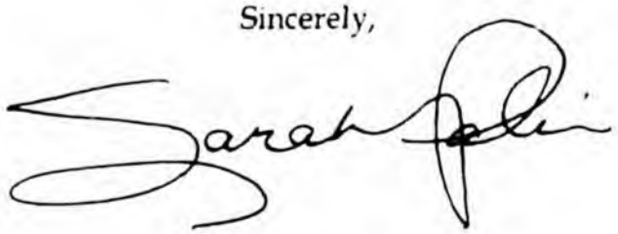
In addition, the Bureau's notice in mid-August to two Hawaiian cruise operators that it was looking at the issue of coastwise vessels falls far short of adequate notice to Alaska -- if in fact it is the Bureau's intention to impose its Hawaii "fix" on Alaska The official notice in the Federal Register on November 21 was the first public word of the proposed rule interpretation

I mention it above, but will repeat it again for emphasis if the Bureau insists on applying its Hawaii interpretation to Alaska, then it should at the least withdraw its proposal and undertake a much more thorough review of the issues Such as.

- Is it reasonable to apply the same rule interpretation to Alaska as Hawaii? Are there different circumstances in the two operations?
- How could cruise lines meet the proposed requirements (a 48-hour port call in Canada and spending at least half of each cruise's port time in Canadian ports) without canceling out hundreds of stops in Alaska ports and damaging communities statewide? After sailing time to Alaska and at least 48 hours in port in Canada, there would not be much of Alaska left in a seven-day Alaska cruise.
- What would be the economic damage to Alaska communities and businesses from the proposed interpretation?
- Would a negotiated rule-making process produce a better result than an edict under a 30-day notice?

Thank you for your consideration of my comments. Again, I ask that you either clarify that Alaska cruises are excluded from the Hawaiian coastwise vessels interpretation, or withdraw the proposed rule interpretation, perform a thorough review of the impacts, and then follow the normal federal rule-making process, including the opportunity to comment. This process is necessary to ensure adequate consideration of all the economic issues at stake.

Sincerely,



Sarah Palin
Governor

cc: The Honorable Ted Stevens, United States Senate
The Honorable Lisa Murkowski, United State Senate
The Honorable Don Young, United States House of Representatives
W. Ralph Basham, Commissioner, Customs and Border Protection
John Katz, Director, State of Alaska Office of the Governor, Washington, D.C.

Detroit Free Press
Michigan's Most Read Newspaper

PRINT THIS

New rule would turn cruise tourism industry upside down

By DENNIS CAMIRE • ASSOCIATED PRESS • February 18, 2008

WASHINGTON — Federal officials are working to finish a proposed rule that threatens to dramatically alter the itineraries of many foreign-flagged cruise ships, such as those operated by Carnival Cruise Lines, Royal Caribbean and others, by requiring much longer port stays.

The proposed change would require 48-hour stays, instead of the usual four- to 12-hour visits, at foreign ports of call, possibly reducing the number of stops during trips of a week or less.

It is aimed at helping the U.S.-flagged ships operated by Norwegian Cruise Lines America on Hawaiian cruises compete with foreign-flagged cruise lines sailing from California. Almost all cruise ships operating from U.S. ports are registered in foreign nations to avoid the cost of meeting U.S. labor, health, safety and environmental standards.

But the impact could have much broader implications, imperiling cruises from U.S. ports to Alaska, Canada, New England and some to the Caribbean, according to critics.

Cruise vacationers may find companies offering more limited itineraries and fewer three and four day trips.

"It's the most ridiculous thing I've ever heard of," said Susan Aft, president of Discount Travel and Cruise in Atlanta. "Nobody wants to stay in some of these (foreign) ports that long."

The changes would be punitive, said Kurt J. Nagle, president of the American Association of Port Authorities.

"If applied uniformly across the United States ... the criteria would turn the U.S. cruise market on its head, resulting in the loss of thousands of jobs in port communities," he said.

But Hawaii's congressional delegation, maritime officials and labor unions and others support the proposed rule. They said foreign-flagged cruise ships sailing to Hawaii are evading current law by making very brief stops, sometimes only an hour, in Mexico, before returning to their California homeports.

"These people are disobeying the law, and they are doing it blatantly," said Rep. Neil Abercrombie, D-Hawaii, a strong advocate for the U.S. maritime industry. "They are not making a real port visit."

But other elected officials, tourism advocates and foreign-flagged cruise lines criticize the rule proposal. They said it could drive cruise ships away from some U.S. ports and force cruise lines to drop shorter trips from their schedules.

"Florida would lose cruise ports of call at Fort Lauderdale, Miami and would eliminate all the calls at Key West," said Florida Gov. Charlie Crist.

James P. Walsh, an attorney representing the Holland America Line, Princess Cruise Line and Carnival Cruise Lines, said cruise lines would have to change all itineraries to meet the proposed rule.

"For example, cruises that call temporarily at Alaska ports will have to move to Vancouver, British Columbia, and away from Seattle," said Walsh, who estimated Holland America's economic impact on Seattle at $400 million in 2006.

The rule change, proposed by Customs and Border Protection, would require most cruise ships calling at more than one U.S. port to stay 48 hours at foreign ports compared with the brief stops they make under the existing rule.

The ships also would have to spend more than half their port time in foreign ports and passengers have to be given the opportunity to go ashore.

As proposed, the rule could result in shorter stays at U.S. ports or dropping them from the itinerary altogether.

Glen Vereb, the customs chief overseeing the cruise industry, said more than 1,000 responses on the rule proposal were received during the recent 30-day comment period. A final rule could be adopted anytime.

Vereb said the intent of the proposed changes is to uphold current law's intent to protect U.S.-flagged ships "to the extent possible."

But the agency was proceeding cautiously, Vereb said.

"We do not want to turn the entire cruise industry upside down," he said. "We've heard the message loud and clear that is what this proposal, if not changed or modified, is going to do."

That's what the cruise industry, state and local officials, port authorities and many others are warning.

"To comply with such a rule, Royal Caribbean Cruises Limited would have to restructure its itineraries,

basing vessels in foreign instead of U.S. ports, eliminating time in U.S. ports and replacing U.S. port calls with foreign ports," said Bradley H. Stein, general counsel for the cruise line.

But maritime officials said changes are necessary to protect the two Norwegian ships operating in the Hawaiian Islands. They are the only U.S. flag cruise ships operating in oceangoing service.

U.S. Maritime Administrator Sean T. Connaughton said current cruise ship practice already has forced Norwegian to drop one ship from the U.S. ship registry and is on the brink of doing the same with its other two.

"The two remaining U.S.-built vessels, representing an additional 1,700 U.S. mariner jobs as well as shore-side employment, must be encouraged to remain in the U.S. registry," Connaughton said.

The Maritime Trades Department of the AFL-CIO said the interests of foreign cruise ship lines should not be rewarded for "willfully evading" the law's foreign port call requirement.

Alan T. Yamamoto, vice president of Norwegian's Hawaii operations, said the cruise has invested $1.3 billion in its fleet and that since 2004, the company has lost more than $250 million in its operations, principally because of lower-cost foreign competition coming from the West Coast.

"Unfair foreign competition poses an imminent threat to the remaining U.S.-flag passenger vessels operating in the Hawaii trades," he said.

sun-sentinel.com/business/sfl-flzport0217sbfeb17,0,4001282.story

South Florida Sun-Sentinel.com

Proposed rule could end some cruise lines' short trips

Proposed regulation could change itineraries

By Tom Stieghorst

South Florida Sun-Sentinel

February 17, 2008

There's only so much you can do on Coco Cay, a flat spit of an island in the Bahamas that *Royal Caribbean International* outfitted for cruise stops about 20 years ago.

Its *Enchantment of the Seas* ship visits for about nine hours on its four-night cruise from Port Everglades. Passengers can snorkel, use water scooters, sunbathe and get a bite to eat. But there are no hotels, no permanent residents and nothing to do when the sun goes down.

Yet under a new rule proposed by U.S. Customs and Border Protection, the *Enchantment* would have to spend at least 48 hours there or violate federal maritime laws.

The proposal is part of a larger battle in the cruise industry putting the interests of U.S.-flagged and -crewed vessels against the bulk of the industry, which uses lower-paid foreign labor. If the rule is adopted as proposed, analysts say the cruise industry would have to drastically alter many of its itineraries.

Trips to Key West, Alaska and autumn cruises from New England would be greatly complicated by the rule. Cruise lines claim it would cost thousands of jobs in U.S. ports.

"It would clearly have an impact," said Rod McLeod, a former cruise line president and now a consultant at McLeod, Applebaum & Partners in Coral Gables. "Three-night cruises out of Florida would certainly be affected. It could affect the four-night market as well."

Supporters say the rule is a way to preserve U.S. jobs and ensure a fair shake for the few oceangoing cruise ships that fly the American flag, primarily in Hawaii.

Opponents call it a wild overreaction to a minor problem that in the end would cost the U.S. economy more jobs than it saves.

The ruckus started in November when the customs agency published its proposed rule in the Federal Register. It said foreign-flagged ships such as *Enchantment*, which is registered in the Bahamas, would

have to stay at a foreign port 48 hours if they left or arrived at a U.S. port on the cruise.

A law called the Passenger Vessel Services Act has been on the books since 1886 to block foreign ships from taking passengers from one U.S. port to another. It specifies that foreign ships cruising from U.S. ports must also stop at a foreign port, but doesn't say how long they must stay.

Congress and the customs agency have periodically shaped the interpretation of the law to fit new circumstances.

In this case, the agency was responding to a 2003 initiative by *NCL America*, a subsidiary of Miami-based *NCL Corp.* It put three U.S.-flagged cruise ships largely crewed by American workers in Hawaii in the first test of whether those ships, with their higher pay and regulatory standards, could succeed.

The answer, so far, appears to be no. NCL America has lost more than $250 million to date. It redeployed one of the three ships from Hawaii earlier this year and last week announced it would pull a second ship, leaving only the 2,146-passenger *Pride of America* to carry on the experiment.

In part, NCL America blames a steep rise in competition from foreign-flagged ships that sail between the U.S. West Coast and Hawaii with a one-hour, late-night stop in Ensenada, Mexico, to stay in compliance with the maritime laws.

"Unfair foreign competition poses an imminent threat to the remaining U.S.-flag passenger vessels operating in the Hawaiian trades," it said in a filing supporting the new customs proposal.

At its peak, more than 4,000 U.S. seafarers worked for NCL in Hawaii, though after the second ship leaves for Asia in May, that figure will be closer to 1,000.

Foreign-flag carriers, represented by the Fort Lauderdale-based Cruise Lines International Association, say the excess capacity in Hawaii was put there mainly by NCL America. But the remedy offered by the customs agency goes far beyond any regional dispute in Hawaii, they say.

"The proposed solution would turn the entire cruise industry inside out," said Royal Caribbean general counsel Bradley Stein, in a filing with the government.

Stein argued that the 48-hour-stay requirement is "wildly inconsistent" with current cruise practices. Ships generally don't stay in one port more than 10 to 12 hours.

"Passengers want the experience of sailing and visiting several places, which is only practical if the ship stays under way most of the time," Stein wrote.

To comply would require Royal to base ships in foreign ports and replace U.S. port calls with foreign ones, costing "tens of thousands" of U.S. jobs, he said.

Royal proposed as a test a four-hour stay in a foreign port that offers shore activities.

Both sides have sought to influence the customs rule. The governors of Florida, California and Alaska have condemned the proposal. Hawaii Sen. Daniel K. Inouye cheered it, saying better environmental, work and safety rules put U.S. ships at a cost disadvantage.

However, even NCL America said it would narrow the scope of the customs proposal.

By imposing the 48-hour rule on any itinerary from a U.S. port, the customs agency would "needlessly harm U.S. port interests unrelated to Hawaii," said Alan Yamamoto, NCL vice president of Hawaiian operations, "without any countervailing benefit to U.S.-flagged passenger vessels."

McLeod, the cruise consultant, said that whatever the merits of the proposal, it got the industry's attention.

"Forty-eight hours doesn't make any sense," he said. "I think the people who crafted that know it, and this was supposed to trigger a dialogue."

Tom Stieghorst can be reached at tstieghorst@sun- sentinel.com or 305-810-5008.

Rule may mean less time in Alaska for cruiseships - IMPACT: Juneau estimates it could lose $68 million in spending from passengers.

Anchorage Daily News (AK) - February 11, 2008

Author: *ANNE SUTTON The Associated Press ; WIRE*

Every year **cruiseship** companies pour millions of dollars into ads inviting travelers to "drink in the splendor," "savor the essence" and "explore the magic" of Alaska's vast glaciers, towering mountain peaks and pristine waters.

But what if their **ships** had to spend more than half their **cruise** dawdling in British Columbia, before they could sprint north for just a quick peek at the magic, then scuttle back to the home port in Seattle?

"It would be tough to sell an Alaskan **cruise** if they could only come for one day," said Andrew Green, the Juneau port manager for **Cruise** Line Agencies of Alaska.

Yet many in the **cruise** industry claim it could happen under a proposed federal rule with the potential to cost millions of dollars in lost revenues and launch a raft of lawsuits.

Four months shy of the start of Alaska's busy **cruiseship** season, **cruise** lines and coastal communities are awaiting a decision from the U.S. Customs and Border Protection that could either curtail how much time many **cruiseships** spend in Alaska ports or require a massive redeployment to Vancouver, British Columbia, of hundreds of vessels now scheduled to leave from Seattle and San Francisco.

"Our options would basically be to adhere to it in some manner or to litigate. If we had to change the itineraries, that in itself would create a great deal of commotion," said John Shively, Holland America Line's vice president for government and community relations in Alaska.

As proposed, the rule would require that **ships** which are registered in a **foreign** country and embark and disembark passengers from U.S. ports must spend at least 48 hours in a **foreign** port. The rule further states that the amount of time they spend in a **foreign** port has to equal 50 percent of the total amount of time spent at U.S. ports of call.

About a third of the 500 **cruises** bound for Alaska this year would fall under the new rule. It would take a big bite out of their mostly seven-day itineraries to Alaska.

"It makes everybody very anxious because it would take a significant cut out of the market, a significant reduction in the number of people who would be able to visit," said Johan Dybdahl, a Juneau assemblyman and president of a tourism enterprise that caters to **cruiseships**.

Juneau alone estimates it would lose in a single season $68 million in direct spending from **ships** that brought a million passengers to the city last year.

At the heart of the conundrum lies century old maritime laws and a dispute that began thousands of miles away from Alaska in the balmy waters of Hawaii.

The Passenger Vessel Services Act of 1886 and the Jones Act of 1920 are meant to protect the U.S. passenger vessel trade from **foreign** competition.

The major **cruiseship** companies fly the flags of countries like the Bahamas, Panama and Bermuda, where they register their **ships** to avoid paying higher taxes, higher labor costs and other requirements of the U.S.- **flaggedships**.

As **foreign** - **flaggedships**, they are prohibited from transporting passengers between U.S. ports unless they include a stop in a **foreign** port.

The companies, however, have found ways to limit the pain.

Ships heading to Alaska from Seattle often spend half a day in Victoria, British Columbia. Passengers can leave the **ship** to explore the town's quaint byways and load up on fudge and T-shirts.

But vessels headed for the Hawaiian islands want to cover the many open ocean miles quickly. Steaming out of San Diego and Los Angeles, they generally duck into Ensenada, Mexico, for about an hour in the middle of the night for cursory compliance with the law, at best.

Norwegian **Cruise** Line recently cried foul over the Ensenada touch-and-go, claiming companies were using the stop to evade federal law.

Since 2004, the Miami-based company has invested $1.3 billion to deploy the only ocean-going **cruiseships** under the U.S. flag. Their purpose was to offer a unique island-only **cruise**.

But **foreignships**, with bigger, faster engines able to traverse the ocean more quickly, have flooded the market, leaving the U.S. **ships** struggling to compete.

Under the direction of the U.S. Maritime Administration, the proposed rule was written to curtail the **foreignships**' time in the islands and help level the playing field.

The catch is that the rule applies everywhere, not just to Hawaii.

John Binkley, president of Alaska **Cruise** Association, said the competitive imbalance in Hawaii doesn't exist in Alaska, where U.S.- **flaggedcruiseships** are small, exclusive **ships** that enjoy a specialized niche.

Binkley said the rule in Alaska would run counter to the goal of federal maritime law.

"It will in effect drive commerce away from U.S. ports," he said. "The purpose is really to help U.S. commerce."

The federal register logged more than a thousand comments during the public comment period, which closed in late December. From members of Congress to a beauty salon operator in Bar Harbor, Maine, many protested the broader application of the rule.

Alaska Gov. Sarah Palin urged the agency to withdraw its proposal and do a thorough analysis, adding that the rule's short notice left those affected with little time to properly respond.

"Taking something that is working well and changing it -- much less on 30-days' notice -- is not reasonable public policy," said Palin.

If **ships** are redeployed to British Columbia to avoid the 48-hour requirement, the biggest loser would be the Port of Seattle.

Seattle has sunk $35 million into **cruiseship** terminal improvements in recent years and grown from six sailings in 1999 to an expected 211 this year.

"It would be a significant threat to our **cruise** industry here in Seattle," said port spokeswoman Charla Skaggs.

The federal agency did not do an economic analysis of the new rule, deeming it unnecessary, said Harold Singer, chief of the Department of Homeland Security's regulations branch. Singer declined to comment further, saying the public comments are still under review.

It's unclear how companies will react if the rule goes into effect. Holland America's John Shively is not sure his company even has a fallback plan.

"I do think people are hopeful that enough commotion was raised that the federal government will look at it again," said Shively.

Caption: Photo 1: ak_cruise_ships_021108.jpg
AL GRILLO / Associated Press archive 2003 **Cruise** lines and coastal communities such as Juneau, where two Holland America **ships** dock in 2003, are awaiting a decision from federal authorities that could curtail how much time many **cruiseships** spend in Alaska ports.

Edition: *Final*
Section: *Main*
Page: *A4*
Dateline: *JUNEAU*
Record Number: *1626440902/11/08*

Back To Results Previous **Article 1 of 94** Next

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: **SJR 12**
() Publish Date:

Identifier (file name):
Title: SJR 12. Cruise Ship Port Times: Jones Act
Dept. Affected:
RDU
Component

Sponsor: Senator Therriault
Requester: Senate State Affairs
Component Number

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2009**	**FY 2009**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2008) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

Prepared by: Shalon Szymanski, Senate State Affairs Committee Aide
Phone 465-4522
Division
Date/Time 02/26/08 2:00 p.m.
Approved by: Senator Lesil McGuire, Chair
Date 2/26/2008

(Revised 10/23/2007 OMB)