

provide services related to shipping and seamen. Those they do perform are very routine functions. While historically important, protection of seamen is not any longer a significant function performed by consular officers.

In addition, there have been major legislative changes since Chapters 81–88 were promulgated. Many of the current regulations have been unchanged since 1957, and a good portion have become obsolete. For example, 22 CFR section 87.1 authorizes consular officers to issue a certificate of American Ownership or a Provisional Certificate of Registry. In fact, Provisional Certificates of Registry have not been issued since 1981.

Another example is 22 CFR section 84.8(b), which refers to “shipping commissioners.” There are no longer any shipping commissioners. In addition, some of the statutes on which the regulations are based have been repealed (e.g., 46 U.S.C. 593, and 46 U.S.C. 621 to 628) and replaced by new and different legislation.

In repealing the regulations on Shipping and Seamen, the Bureau of Consular Affairs has consulted with the Coast Guard and the United Seamen’s Service. It was determined that many of the current regulations merely restate statutory or common law, or deal with the internal policy of the Department of State. As such, they are unnecessary and can be removed.

If new regulations are proposed, they will be much simpler and consistent with the current State Department dealings with shipping and seamen. The core functions (responsibilities to vessels, relief and repatriation of individual seamen) will be spelled out as necessary.

It is hereby certified that the repeal of these regulations will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 605(b), because the issues addressed are not of an economic nature and a very small number of U.S. vessels will be affected. In addition, the repeal of these regulations will not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35. Nor do these rules have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

Review under E.O. 12988 is not required, because no new regulations are being proposed at this time. This regulatory action is exempt from review under E.O. 12866, but has been undertaken consistent with the policies and principles thereof. This action is

being taken as a final rule, pursuant to the “good cause” provision of 5 U.S.C. section 553 (b); notice and comment are not necessary in light of the fact that Department is merely repealing regulations that are obsolete or repetitive of other statutory or procedural guidance. Moreover, the Department will continue to have authority to act with respect to shipping and seamen by relying directly upon existing statutory authority.

List of Subjects in 22 CFR Parts 81, 82, 83, 84, 85, 86, 87, and 88

Foreign Service, Seamen, Vessels.

Pursuant to the above authorities, Title 22 of the Code of Federal Regulations is amended as set forth below:

PARTS 81 THROUGH 88—[REMOVED]

1. Parts 81 through 88 are removed.

Dated: May 31, 1996.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

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Bureau of Economic and Business Affairs

[Public Notice 2396]

22 CFR Part 89

Foreign Prohibitions on Longshore Work by U.S. Nationals

AGENCY: Bureau of Economics and Business Affairs, State.

ACTION: Final rule.

SUMMARY: In accordance with the Immigration and Nationality Act of 1952, as amended, the Department of State is issuing a rule updating the list, of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation or in practice in the country.

EFFECTIVE DATE: June 13, 1996.

ADDRESSES: Office of Maritime and Land Transport (EB/TRA/MA), Room 5828, Department of State, Washington, D.C. 20520-5816.

FOR FURTHER INFORMATION CONTACT: Richard T. Miller, Office of Maritime and Land Transport, Department of State, (202) 647-6961.

SUPPLEMENTARY INFORMATION: Section 258 of the Immigration and Nationality Act of 1952, 8 U.S.C. 1288, determines that alien crewmen may not perform longshore work in the United States.

Longshore work is defined broadly to include “any activity relating to the loading or unloading of cargo, the operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof.” The Act goes on, however, to define a number of exceptions to the general prohibition on such work.

Section 258(b)(2), in what is known as the “Exception for Safety and Environmental Protection,” excludes from the definition of longshore work under this statute “the loading or unloading of any cargo for which the Secretary of Transportation has, under the authority contained in chapter 37 of title 46, United States Code (relating to Carriage of Liquid Bulk Dangerous Cargoes), section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), section 4106 of the Oil Pollution Act of 1990, or section 105 or 106 of the Hazardous Materials Transportation Act (49 U.S.C. App. 1804, 1805) prescribed regulations which govern—(A) the handling or stowage of such cargo, (B) the manning of vessels and the duties, qualifications, and training of the officers and crew of vessels carrying such cargo, and (C) the reduction or elimination of discharge during ballasting, tank cleaning, handling of such cargo.”

Section 258(c), in what is known as the “Prevailing Practice Exception,” exempts particular activities of longshore work in and about a local port if there is a collective bargaining agreement covering at least 30 percent of the longshore workers in the area that permits the activities or if there is no such collective bargaining agreement and the employer of the alien crew files an appropriate attestation, in a timely fashion, that the performance of the activity by alien crewmen is permitted under the prevailing practice of the particular port. The attestation is not required for activities consisting of the use of an automated self-unloading conveyor belt or vacuum-actuated system on a vessel unless the Secretary of Labor finds, based on a preponderance of evidence which may be submitted by any interested party, that the performance of such particular activity is not the prevailing practice in the area or that certain labor actions are underway.

Section 258(d), the “State of Alaska Exception,” provides detailed conditions under which alien crewmembers may be allowed to perform longshore activities in Alaska, including the filing of an attestation

with the Secretary of Labor at least 30 days before the performance of the work setting forth facts and evidence to show that the employer will make a bona fide request for U.S. longshore workers who are qualified and available, will employ all such workers made available who are needed, and has informed appropriate labor unions, stevedores, and dock operators of the attestation, and that the attestation is not intended to influence an election of bargaining representatives.

Finally, Section 258(e), in what is known as the "Reciprocity Exception," allows the performance of activities constituting longshore work by alien crew aboard vessels flagged and owned in countries where such activities are permitted by crews aboard U.S. ships. The Secretary of State is directed to compile and annually maintain a list, of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country. The Department of State (hereinafter the Department) published such a list as a final rule on December 27, 1991 (56 FR 66970), corrected on January 14, 1992 (57 FR 13804). An updated list was last published on December 13, 1993 (58 FR 65118).

At the request of the Committee on Foreign Affairs of the House of Representatives, the Government Accounting Office (hereinafter the GAO) reviewed the Department's criteria and methodology for compiling the list of countries in the past. The GAO concluded that "with relatively small changes in how it obtains information and determines which countries to place on the list, State can significantly improve its data collection and decision-making procedures." With respect to the statute's use of the phrase "in practice", the GAO concluded that differing interpretations were legally supportable and observed that the interpretation being followed tended to maximize the number of countries granted a reciprocity exception.

After giving notice on March 24, 1994 (59 FR 13904) that it was updating the list, the Department issued a proposed rule on November 24, 1995 (60 FR 58026) with a revised list. The proposed rule reflected changes in methodology recommended by the Government Accounting Office and, in an effort to ensure that the list reflects restrictive practices in foreign countries fully and accurately, standards for reciprocity taking into account practices, whether or not required or sanctioned by governments. In response, the

Department received 79 written comments and oral demarches from two foreign governments.

Comments and Responses

General

Comment: Four commenters, all from U.S. labor unions, supported the Department's interpretation of the term "in practice" as including restrictive practices irrespective of government involvement. The writers said that the rule would protect American longshore workers from incursions by foreign mariners doing cargo handling as distinguished from navigational duties. A number of commenters, on the other hand, took exception to the proposal to consider private activities when determining eligibility for the reciprocity exemption and observed that the Government Accounting Office found the interpretation used in previous rulemakings on this subject legally supportable. Several of them asserted that the legislative history did not support the proposed rule. They disputed the Department's conclusion that the reciprocity provision is a limited exception.

Response: In its report, the GAO concluded that the statutory phrase "in practice" is susceptible to differing interpretations and noted that the language of the law and its legislative history could support an interpretation under which privately negotiated collective bargaining agreements would disqualify a country for a reciprocal exception. On the basis of its review of the statute, the Department concurs. The impact on the list of this change is modest, however; only six countries have been added to the list solely because of private collective bargaining agreements. The Department's conclusion that the reciprocity exception is a "limited exception" is based on the statutory scheme embodied in section 258, which prohibits longshore work by alien seamen in general, and then enumerates specific, limited circumstances, including on the basis of reciprocity, in which such work may be performed.

Comment: One commenter said that the proposed rule would violate U.S. treaty commitments with a number of countries, since many U.S. treaties of Friendship, Commerce and Navigation accord vessels of the other party national treatment and most-favored-nation treatment.

Response: While many U.S. treaties of Friendship, Commerce and Navigation accord vessels of the other party, and nationals of the other party engaged in commercial activity, national treatment

and most-favored-nation treatment, such treaties typically contain clauses which subject the entry privileges granted therein to the immigration laws of each party and deny any right to engage in gainful occupations in contravention of limitations expressly imposed, according to internal laws and regulations, as a condition of their admittance.

Comment: One commenter recalled that the definition in Section 258 of the Immigration and Nationality Act of longshore work differs from the rules, regulations and practice in other countries and asserted that application of the definition in the U.S. legislation to foreign ships would hinder the sovereignty a flag state exercises over a ship in its register. In this connection, several commenters expressed concerns about U.S. citizens doing certain longshore activities, such as handling of ships' stores, repairs to ships, midstream loading, opening and closing of cargo hatches, and fueling, which, they said, the crew traditionally carries out and can better do.

Response: The definition of longshore work contained in Section 258 is indeed broad, encompassing "any activity relating to the loading or unloading of cargo, the operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof." Under this broad definition, the Department is directed in the law to maintain the list of countries "by particular activity." Only those particular activities restricted in a foreign country will be restricted in the United States. Thus, in no case will the application of the law provide for restrictions broader than those applied by the foreign country in which the ship in question is flagged or owned. Similarly, practices traditionally performed by ships' crews will not be restricted in the U.S. unless the performance of such practices is restricted in a foreign country.

Comment: Several commenters expressed fear that the proposed rule would increase the danger of accidents and environmental mishaps. The writers said that transient port workers could not acquire the level of experience and training necessary to operate sophisticated cargo transfer equipment, which often differs from ship to ship. The commenters expressed concerns that at the high rates of cargo discharge the equipment makes possible, mishandling might cause serious injury to personnel and create environmental hazards.

Response: The law does not give the authority to grant a reciprocity exemption for safety or environmental concerns, except for countries that regulate longshore activities in their ports and waters on this basis. Congress separately addressed environmental and safety issues regarding the handling of certain types of hazardous cargo in Section 258(b)(2) discussed earlier.

Comment: Several commenters highlighted the practical difficulties of applying a rule to longshore activities that take place in private terminals, many of which are in remote areas where no shoreside labor is available or where there may be no port facilities at all.

Response: The Department notes that the "Prevailing Practice Exception" described above would appear to cover the circumstances described by these commentators. In those cases where the Department obtained particular information about practices in private terminals, that information has been reflected in the list of countries.

Implementation Procedures

Comment: One commenter said that the survey was too limited because it did not take general labor laws into account. Another commenter expressed the fear that the standardized methodology developed by the Department would generate inaccurate findings and overlook local rules in foreign countries affecting specialized vessels. The writer noted that appropriate procedures for specialized ships may not exist in many smaller countries where such ships rarely call. The commenter doubted whether the follow-up procedures would be thorough enough to make accurate or fair determinations. Another commenter recommended a provision for periodic review to account for changes in longshore work resulting from technological change. Noting some activities enumerated in the list, another commenter asked for a procedure to secure official interpretations of authorized longshore work exemptions for nations generally listed as ineligible for the reciprocity exception. Several commenters worried that the proposed rule would overburden U.S. immigration inspectors by making them responsible for interpreting differing customs and practice in each port.

Response: The GAO report urged the Department to develop standardized methodology to ensure consistent treatment of countries. The Department has made every effort to obtain full and accurate information about the countries listed, including general labor laws where they affect the performance of

longshore work by U.S. seamen, and is prepared to investigate information supplied by interested parties and adjust the list accordingly. The Department is required to update the list annually. The Department's goal is to maintain the list in a fashion that reflects laws, regulations and practices in foreign countries as accurately as possible. Where technological change results in a change in such laws, regulations or practices, that will be reflected in the list. The responsibility for interpreting the list and authorizing or denying the performance of activities by alien members of foreign ships' crews in specific instances lies with the Immigration and Naturalization Service (INS). The Department is prepared to assist the INS in cases where more detailed information about specific practices in foreign countries would be useful in their determination. While the expansion of the list of countries in which restrictions have been found may change the determination by the INS in specific cases, it is not anticipated that the workload of the INS would expand significantly as a result.

Comment: One commenter noted that the Department has not placed countries about which it has no information on the list. The writer said that any country should be on the list unless the country can conclusively demonstrate its eligibility for a reciprocity exemption.

Response: The law directs the Department to maintain a list of countries where restrictions exist. The Department is not in a position to assume such restrictions absent specific information.

Comment: One commenter said that countries whose ships are currently prohibited from calling on U.S. ports should be put on the list in case the prohibition ends during the life of the Department's rule.

Response: The Department is prepared to consider the situation with respect to such countries at the time their ships become eligible to enter U.S. waters, and revise the list if necessary.

Comment: One commenter questioned the Department's decision not to survey laws, regulations and practices in countries, dependencies and other geographic entities with a population of less than 5,000 people. The writer noted that there is nothing in the statute or the legislative history to support this.

Response: The Department does not believe that it has omitted areas whose ships are likely to call in the United States. Interested parties are encouraged to provide the Department with information concerning longshore rules, regulations or practices in areas not on the list.

Economic Impact

Comment: Several comments questioned the rationale and methodology leading to the Department's conclusion that the benefits of the proposed rule for U.S. longshore workers and seamen outweigh the benefits to U.S. businesses under the previous interpretation. The writers generally agreed that the law is intended to protect the jobs of U.S. longshore workers but contended that the proposed rule would require longshore workers in many situations where they are not needed. Many commenters feared that the proposed rule would have a negative impact on business, in particular for shippers of bulk commodities and exporters of timber products. Other comments suggested that the proposed rule would have an impact on the budgets of state and local governments in the snow belt by raising the transport costs of road salt, a heavy bulk commodity whose transport costs can exceed the initial acquisition costs. Some comments also expressed concern that the rule would discourage technological innovation. One suggested that the proposed rule would give foreign competitors an advantage in the world market by diverting modern, more efficient vessels to other countries.

Response: In the Department's view, the economic rationale for Section 258 rests on the fact that all of the longshore workers or seamen to whom benefits may accrue are U.S. citizens, while the businesses that may pay higher costs, and their consumers, are often foreign. In those cases where the effect of the law is, ceteris paribus, to shift work from foreign crews to U.S. longshore workers, there will be an obvious gain for the U.S. economy. In those cases where the shift to U.S. longshore workers results in higher loading or unloading costs, but the activity continues at the same levels, for example in the case of the import of road salt, there may still be an overall net gain for the U.S. economy as a whole. From a macroeconomic point of view, increased costs to American businesses, municipalities, or consumers would be offset by the increased income and spending of U.S. longshore workers or seamen; in those cases where at least part of the increased cost was borne by foreign entities, there would be a net gain for the U.S. economy as a whole. A number of companies have raised the possibility of job losses or other external negative effects in the United States. While it is certainly possible that application of the law could result in higher shipping

costs in certain trades, and that such higher costs could affect the level of those trades, in general the Department found such concerns to be based on worst case scenarios focusing solely on the reciprocity exception while disregarding other measures that might be taken to reduce costs. For example, in a number of cases, concerns were expressed about the loss of a reciprocity exception in industries and situations where, in the Department's view, a "Prevailing Practice Exception" would almost certainly apply. This is particularly likely in the case of bulk shippers operating in private ports or terminals. In other cases, one or another of the other exceptions in section 258 may apply.

In cases where no exception applies, other measures that may be available to businesses to mitigate any negative effects from this ruling include the employment of U.S. citizens aboard foreign-owned or flagged vessels to perform the work in question, the use of U.S. flag ships, and the reflagging of vessels in countries eligible for the reciprocity exception. In all cases, companies will be able, at a minimum, to utilize the collective bargaining process to seek cost structures that maximize the collective economic benefit for all concerned.

With respect to fears that companies might have to employ unnecessary labor, the Department notes that Section 258 is quite explicit in prohibiting the performance of work by alien seamen. The intent is to substitute U.S. labor for foreign labor, not to add unnecessary labor, although this would be allowed on a reciprocity basis if it were an accepted practice in the foreign country in question.

As to the possible diversion of modern more-efficient vessels to other countries, companies may wish to explore provisions in the Immigration and Naturalization Act which allow foreign workers with specialized skills to work in the United States. The Department notes, for example, that operators of specialized equipment connected with the log trade have entered the United States, after appropriate determinations, with specialized visas other than those issued to crew members. The Department is of the view that such workers do not fall within the scope of Section 258, which relates specifically to persons eligible to enter the United States under section 101(a)(15)(D)(i).

With respect to the specific industries about which questions were raised, the Department notes that in some cases it was possible to confirm information supplied about alleged restricted or

unrestricted practices in foreign countries. Where necessary in these cases, the list of countries has been adjusted.

Specialized Vessels

Comment: Many comments highlighted the effect of the proposed rule on specialized vessels. Noting the special training required for the safe and efficient operation of equipment aboard these ships, several commenters requested a blanket exemption for self-unloading bulk vessels and log carriers.

Response: The Department does not have the authority to grant a blanket exemption for self-loading/unloading bulk vessels or log carriers, or, indeed, any specific class of ships. Country-specific reciprocity exceptions of this type were sometimes possible, however. The Department notes that the law refers specifically to vessels with self-unloading conveyor belts and vacuum-actuated systems in discussing the "Prevailing Practice Exception."

Comment: One commenter contended that the law was not intended to apply to passenger vessels.

Response: The Department agrees, based on language in the Conference Report, that the law was not intended to apply to passenger vessels.

Status of Individual Countries

Canada: A large number of comments discussed Canada's eligibility for a reciprocity exception. Referring to the historically close links and free trade commitments between Canada and the U.S., several comments called for a blanket exemption for the entire country. One commenter contended that Canada has a general regulation that the Canadian Government might not be enforcing which requires an employment validation for foreign crew members. The writer called for placing Canada on the list because of this legal requirement. Many comments went into great detail about practices in different parts of Canada. Twenty-six commenters stressed the importance of maintaining an exception for Canadian bulk vessels in the Great Lakes. They warned that elimination of the exception would hurt the special trade relationship between the United States and Canada by raising transport costs for a variety of bulk commodities. A number of them noted that the crews of U.S. bulk ships in Canadian Great Lakes ports are free to carry out longshore work. The writers offered technical suggestions about the exception in the listing for that region. Another commenter reported that a collective bargaining agreement in Vancouver,

British Columbia prevents the use of belt self-unloading vessels.

In response, the Department has consulted extensively with U.S. diplomatic posts in Canada, U.S. carriers operating into Canada, union and industry officials, and the Canadian government. The widespread existence of restrictive collective bargaining agreements at liner terminals and public ports was confirmed, requiring the inclusion of Canada on the list of countries with restrictive practices. However, the technical corrections to the exceptions for bulk cargo at Great Lakes ports were found to reflect actual practice and have been incorporated in the list. Two U.S. operators of specialized self-loading/unloading log carriers confirmed that they have been able to operate in Canadian Pacific ports and waters without restrictions on their U.S. crews, and an exception has therefore been added in this regard. Exceptions were also added for a number of shipboard activities found to be generally excepted in Canadian collective bargaining agreements. Finally, U.S. carriers, Canadian government and industry officials, and labor union officials advised the U.S. Consulates in Montreal, Halifax and Vancouver that restrictions in collective bargaining agreements do not apply to U.S. self-loading/unloading bulk vessels calling on private terminals, so an exception was added for these vessels at private terminals.

Chile: After reviewing the report from the U.S. Embassy in Santiago, a commenter questioned the decision not to place Chile on the list because of a provision in Chilean law allowing authorities to restrict access to port areas by any person.

The Department acknowledges the existence of the law, but notes that it does not require access to be restricted. According to information provided by the U.S. Embassy in Santiago, access by U.S. mariners is not restricted. Therefore, Chile has not been added to the list.

Congo: A commenter notes that the U.S. Embassy in Brazzaville did not find any restrictions on longshore work, but had reported in response to inquiries to compile earlier lists that the Congo did prohibit foreign mariners from carrying out longshore work.

The Department has asked the U.S. Embassy in Libreville Congo to investigate further. Based on the most current information, Congo will not be added to the list at this time.

France: One commenter noted that the U.S. Embassy in Paris did not find any restrictions on longshore work, but had reported in response to inquiries to

compile earlier lists that France had laws setting aside longshore activities for local port workers.

At the Department's request, the U.S. diplomatic posts in France investigated further and determined that French law does in fact restrict longshore activities, with certain exceptions, to registered workers employed by a stevedore company at a French port. France therefore has been placed on the list.

Greece: The U.S. Embassy in Athens had reported that there were not any restrictions on longshore work, but the Department received other reports that local dockworkers have the exclusive right to do longshore work.

The Department asked the U.S. Embassy in Athens to investigate further. The Embassy has confirmed that foreign crew may not operate shore-based equipment to load/unload a vessel, as a license is required to operate such equipment. Greece is therefore being added to the list of countries.

Greenland: The Government of Denmark reported that Greenland does not possess a separate ship registry and asked that Greenland be treated the same as Denmark for purposes of possible inclusion in the list of countries.

The U.S. Embassy in Denmark confirmed the Danish Government's report and provided information indicating that U.S. mariners were not restricted in activities defined as longshore work in the statute. Greenland has therefore been dropped from the list.

Italy: After reviewing reports from the U.S. Embassy in Rome, a commenter questioned whether Italy should be placed on the list for line handling. The commenter noted that Italian law does not consider line handling as longshore activity and requires authorization by government authorities. The commenter also questioned whether Italian law only allows mariners from EU member countries to perform longshore work.

At the request of the Department, the U.S. Embassy in Rome investigated further and determined that certain longshore activities, including cargo loading, discharge and transfer, may be performed by EU and non-EU mariners with authorization from the national maritime authority or port authority where a maritime office is not present. Italian law, on the other hand, does not allow foreign mariners to handle mooring lines on the dock or do other activities not immediately related to cargo handling. Italy is therefore being added to the list.

Norway: A commenter noted that the U.S. Embassy in Oslo did not find any restrictions on longshore work, but had

reported in response to inquiries to compile earlier lists that Norwegian laws not in force restrict most longshore work to local port workers.

The Department has asked the U.S. Embassy in Oslo to investigate further. Pending further information, Norway is not being added to the list.

Oman: One commenter pointed out that information received in response to the Department's questionnaire differed from that reported in the past.

The Department has asked the U.S. Embassy in Muscat, Oman to investigate further. Pending confirmation of its initial report, the Department is not adding Oman to the list.

Sierra Leone: One commenter pointed out that information received in response to the Department's questionnaire differed from that reported in the past.

In response, the Department reviewed conditions in Sierra Leone and determined that the Sierra Leone Ports Authority is the only agency designated by the government to engage in stevedoring services. Sierra Leone has therefore been added to the list of countries in which there are restrictions.

Vanuatu: Two commenters asserted that there are no government rules, regulations or collective bargaining agreements restricting longshore work by U.S. mariners in Vanuatu.

In response, the Department reconfirmed with the U.S. Embassy in Port Moresby that actual practice in Vanuatu was restrictive in some respects. Vanuatu has therefore been retained on the list, in slightly modified form.

List of Subjects in 22 CFR Part 89

Aliens, Crewmembers, Immigration, Labor, Longshore and harbor workers, Seamen.

For the reasons set out in the preamble, 22 CFR Chapter I is amended as follows:

PART 89—PROHIBITIONS ON LONGSHORE WORK BY U.S. NATIONALS

1. The authority citation for part 89 continues to read as follows:

Authority: 8 U.S.C. 1288, Public Law 101-649 Stat. 4878

2. Part 89 is amended by revising § 89.1 to read as follows:

§ 89.1 Prohibitions on Longshore work by U.S. nationals; listing by country.

The Secretary of State has determined that, in the following countries, longshore work by crewmembers aboard United States vessels is prohibited by

law, regulation, or in practice, with respect to the particular activities noted:

Algeria

- (a) All longshore activities.

Angola

- (a) All longshore activities.
 (b) Exceptions:
 (1) Opening and closing of hatches
 (2) Rigging of ship's gear, and
 (3) Loading and discharge of cargo on board the ship if local labor is paid as if they had done the work.

Argentina

- (a) All longshore activities.
 (b) Exceptions:
 (1) Cargo tiedown and untying,
 (2) When a disaster occurs,
 (3) Provision of vessel supplies, and
 (4) Opening and closing of hatches.

Australia

- (a) All longshore activities.
 (b) Exceptions:
 (1) When shore labor cannot be obtained at rates prescribed by collective bargaining agreements,
 (2) Opening and closing of hatches, and
 (3) Rigging of ship's gear.

Bahamas

- (a) All longshore activities.
 (b) Exceptions:
 (1) Operation of cargo related equipment on board the ship,
 (2) Opening and closing of hatches,
 (3) Rigging of ship's gear, and
 (4) Use of specialized equipment which port workers cannot handle alone, with the concurrence of the local longshore union.

Bangladesh

- (a) All longshore activities.
 (b) Exceptions:
 (1) Operation of cargo-related equipment integral to the vessel when there is a shortage of port workers able to operate the equipment and with the permission of the port authority, and
 (2) Opening and closing of hatches.

Belgium

- (a) All longshore activities.

Belize

- (a) All longshore activities.
 (b) Exceptions:
 (1) Operation of cargo related equipment,
 (2) Opening and closing of hatches, and
 (3) Rigging of ship's gear.

Benin

- (a) All longshore activities.
 (b) Exceptions:

- (1) Operation of cargo related equipment,
 (2) Opening and closing of hatches, and
 (3) Rigging of ship's gear.
- Bermuda
 (a) Loading and discharge of cargo using cranes and loading equipment situated on the docks or wharves.
 (b) Line handling on the docks.
- Brazil
 (a) All longshore activities at public terminals.
- Bulgaria
 (a) All longshore activities.
 (b) Exceptions:
 (1) Operation of cargo related equipment,
 (2) Opening and closing of hatches,
 (3) Rigging of ship's gear,
 (4) Mooring and line handling, and
 (5) Operation of special equipment and discharge of dangerous cargo, with the preliminary authorization of the Port Administration and Harbor Master.
- Burma
 (a) All longshore activities.
 (b) Exceptions:
 (1) Opening and closing of hatches, and
 (2) Rigging of ship's gear.
- Cameroon
 (a) All longshore activities.
 (b) Exceptions:
 (1) Opening and closing of hatches, and
 (2) Rigging of ship's gear.
- Canada
 (a) All longshore activities.
 (b) Exceptions:
 (1) Opening and closing of hatches,
 (2) Cleaning of holds and tanks,
 (3) Loading of ship's stores,
 (4) Operation of onboard rented equipment,
 (5) Ballasting and deballasting,
 (6) Rigging of ship's gear,
 (7) Exceptions in connection with bulk cargo at Great Lakes ports only:
 (i) Handling of mooring lines on the dock when the vessel is made fast, shifted or let go,
 (ii) Moving the vessel to place it under shoreside loading and unloading equipment,
 (iii) Moving the vessel in position to unload the vessel onto specific cargo piles, hoppers or conveyor belt systems, and
 (iv) Operation of cargo related equipment integral to the vessel.
 (8) Operation of self-loading/unloading equipment and line handling
- by the crews of bulk vessels calling at private terminals, and
 (9) Operation of specialized self-loading/unloading log carriers on the Pacific Coast.
- Cape Verde
 (a) All longshore activities.
- China
 (a) Handling of mooring lines.
- Colombia
 (a) All longshore activities.
 (b) Exception: When local workers are unable or unavailable to provide longshore services.
- Comoros
 (a) All longshore activities.
 (b) Exceptions:
 (1) Operation of cargo related equipment,
 (2) Opening and closing of hatches,
 (3) Rigging of ship's gear, and
 (4) Other activities with government authorization.
- Costa Rica
 (a) Operation of equipment fixed to the ground.
- Cote d'Ivoire
 (a) All longshore activities.
 (b) Exceptions:
 (1) Opening and closing of hatches, and
 (2) Rigging of automated ship's gear.
- Croatia
 (a) All longshore activities.
 (b) Exceptions:
 (1) Operation of cargo-related equipment on board the ship when outside of port, and
 (2) Operation of specialized unloading equipment.
- Cyprus
 (a) All longshore activities.
 (b) Exceptions:
 (1) Opening and closing of hatches, and
 (2) Rigging of ship's gear.
- Djibouti
 (a) All longshore activities.
 (b) Exception: Operation of cranes aboard ship.
- Dominica
 (a) All longshore activities.
- Dominican Republic
 (a) All longshore activities.
 (b) Exception: Operation of equipment with which local port workers are not familiar.
- Ecuador
 (a) All longshore activities.
- Egypt
 (a) Cargo loading and unloading activities not on board the ship.
- El Salvador
 (a) All longshore activities.
- Eritrea
 (a) All longshore activities.
 (b) Exception: Opening and closing of hatches and rigging of ship's gear if port labor is paid as if it had done the work.
- Estonia
 (a) All longshore activities.
 (b) Exceptions:
 (1) On-board mooring activities,
 (2) Replacement of lines,
 (3) Lifting and movement of ladders,
 (4) Movement of vessel's equipment,
 (5) Loading of food and vessel's equipment by cargo-related equipment of the vessel, and
 (6) Securing of general cargo, vehicles and containers to the vessel.
- Fiji
 (a) All longshore activities.
 (b) Exceptions:
 (1) Operation of cargo related equipment, except for discharging cargo,
 (2) Opening and closing of hatches, and
 (3) Rigging of ship's gear.
- Finland
 (a) All longshore activities.
 (b) Exceptions, when not related to cargo loading and discharge:
 (1) Operation of cargo-related equipment,
 (2) Opening and closing of hatches, and
 (3) Rigging of ship's gear.
- France
 (a) All longshore activities.
 (b) Exceptions:
 (1) Loading and discharge of the ship's own material and provisions if done by the ship's own equipment or by the owner of the merchandise using his own personnel,
 (2) Opening and closing of hatches,
 (3) Rigging of ship's gear,
 (4) Operation of cargo-related equipment to shift cargo internally,
 (5) Handling operations connected with shipbuilding and refitting, and
 (6) Offloading fish by the crew or personnel working for the ship owner.
- Gabon
 (a) All longshore activities.
 (b) Exception: All longshore activities if local workers are paid as if they had done the work.
- Georgia
 (a) All longshore activities.

(b) Exception: All longshore activities if local workers are paid as if they had done the work.

Germany

- (a) All longshore activities.
 (b) Exceptions:
 (1) Opening and closing of hatches, and
 (2) Rigging of ship's gear.

Ghana

- (a) All longshore activities.
 (b) Exceptions:
 (1) Operation of cargo-related equipment,
 (2) Opening and closing of hatches, and
 (3) Rigging of ship's gear.

Greece

- (a) Operation of shore-based equipment to load/unload a vessel.

Guatemala

- (a) All longshore activities.

Guinea

- (a) All longshore activities.
 (b) Exceptions:
 (1) Opening and closing of hatches, and
 (2) Rigging of ship's gear.

Guyana

- (a) All longshore activities.
 (b) Exceptions:
 (1) Operation of cargo-related equipment aboard ship,
 (2) Opening and closing of hatches, and
 (3) Rigging of ship's gear.

Haiti

- (a) All longshore activities.

Honduras

- (a) All longshore activities.
 (b) Exceptions:
 (1) Operation of cargo-related equipment,
 (2) Opening and closing of hatches, and
 (3) Rigging of ship's gear.

Hong Kong

- (a) Operation of equipment on the pier.

Iceland

- (a) All longshore activities.
 (b) Exception: Operation of shipboard equipment and cranes.

India

- (a) All longshore activities.
 (b) Exception: Operation of shipboard equipment that local port workers cannot operate.

Indonesia

- (a) All longshore activities.

(b) Exceptions:

- (1) With the permission of the port administrator, when no local port workers with requisite skills are available, and
 (2) In the event of an emergency.

Ireland

- (a) All longshore activities.

Israel

- (a) All longshore activities.

Italy

- (a) Cargo loading, discharge and transfer without the permission of the Maritime Administration or the local port authority, if no office of the Maritime Administration is present, and a deposit for possible use of port stevedoring services.
 (b) Handling of lines on the dock and other longshore activities not immediate related to cargo handling.

(b) Handling of lines on the dock and other longshore activities not immediate related to cargo handling.

Jamaica

- (a) All longshore activities.
 (b) Exceptions:
 (1) Operation of equipment integral to the vessel,
 (2) Opening and closing of hatches, jointly with local port workers, and
 (3) Rigging of ship's gear jointly with local port workers.

Japan

- (a) All longshore activities.

Jordan

- (a) All longshore activities.

Kenya

- (a) All longshore activities.
 (b) Exceptions:
 (1) Opening and closing of hatches,
 (2) Rigging of ship's gear,
 (3) In an emergency declared by the port authority, and
 (4) Direct transfer of cargo from one ship to another.

Korea

- (a) All longshore activities.

Kuwait

- (a) All longshore activities.
 (b) Exceptions, when activities are declined by port workers:
 (1) Operation of cargo-related equipment,
 (2) Opening and closing of hatches, and
 (3) Rigging of ship's gear.

Liberia

- (a) Longshore activities on shore.

Lithuania

- (a) The following activities in harbor:
 (1) Loading and discharge of cargo,

- (2) Maintenance of port equipment,
 (3) Receiving and fixing of dock ropes to harbor equipment,
 (4) Transportation of cargo within the port, and
 (5) Warehousing and security.
 (b) Exception: Opening and closing of hatches.

Madagascar

- (a) All longshore activities.

Malaysia

- (a) All longshore activities.
 (b) Exception: Loading and discharge of hazardous materials.

Maldive Islands

- (a) All longshore activities.
 (b) Exceptions:
 (1) Operation of cargo-related equipment aboard ship,
 (2) Opening and closing of hatches,
 (3) Rigging of ship's gear, and
 (4) Other longshore activities within port limits, when authorized by the port authority in cases when the port authority is unable to provide longshore workers.

Malta

- (a) All longshore activities.
 (b) Exceptions:
 (1) Opening and closing of hatches, and
 (2) Rigging of ship's gear.

Mauritania

- (a) All longshore activities on shore.

Mauritius

- (a) All longshore activities.
 (b) Exceptions:
 (1) Opening and closing of hatches, and
 (2) Rigging of ship's gear.

Mexico

- (a) All longshore activities.
 (b) Exception: Onboard activities if local workers are paid as if they had done the work.

Micronesia

- (a) All longshore activities.
 (b) Exceptions:
 (1) Operation and rigging of gear which local port workers cannot do, and
 (2) When no qualified citizens are available.

Morocco

- (a) All longshore activities.
 (b) Exceptions:
 (1) Operation of ship's gear which port workers cannot operate,
 (2) Opening and closing of hatches,
 (3) Rigging of ship's gear aboard ship, and
 (4) Fastening and unfastening containers.

Mozambique	(2) Longshore activities for hazardous or polluting cargoes, and (3) Longshore activities on government vessels.	Sierra Leone (a) All longshore activities.
(a) All longshore activities on shore.		Slovenia (a) All longshore activities. (b) Exceptions: (1) Opening and closing of hatches, and (2) Rigging of ship's gear.
Namibia (a) Longshore activities on shore.	Poland (a) All longshore activities. (b) Exceptions: (1) Operation of cargo-related equipment, (2) Opening and closing of hatches, and (3) Rigging of ship's gear.	Solomon Islands (a) All longshore activities. (b) Exceptions: (1) Opening and closing of hatches, and (2) Rigging of ship's gear.
Nauru (a) All longshore activities.	Portugal (including Azores) (a) All longshore activities. (b) Exceptions: (1) Military operations, (2) Operations in an emergency, when under the supervision of the maritime authorities, (3) Security or inspection operations, (4) Loading and discharge of supplies for the vessel and its crew, (5) Loading and discharge of fuel and petroleum products at special terminals, (6) Loading and discharge of chemical products if required for safety reasons, (7) Placing of trailers and similar material in parking areas when done before loading or after discharge, (8) Cleaning of the vessel, and (9) Loading, discharge and disposal of merchandise in other boats.	South Africa (a) All longshore activities. (b) Exceptions: (1) Opening and closing of hatches, and (2) Rigging of ship's gear.
Netherlands (a) All longshore activities. (b) Exception: Regular crew activities on board ship, including operation of cargo-related equipment, opening and closing of hatches, and rigging of ship's gear.		Spain (a) All longshore activities.
Netherlands Antilles (a) All longshore activities. (b) Exceptions: (1) Operation of ship's gear, (2) Opening and closing of hatches, and (3) Rigging of ship's gear.		Sri Lanka (a) Longshore activities on shore.
New Zealand (a) All longshore activities.		Sweden (a) Loading and discharge of cargo. (b) Rigging of cargo nets, straps and wires to make ready for loading by the crane. (c) Cargo handling. (d) Line handling on the dock.
Nicaragua (a) All longshore activities. (b) Exception: Shipboard activities if local workers are paid as if they had done the work.	Qatar (a) All longshore activities.	Taiwan (a) All longshore activities. (b) Exceptions: (1) Operation of cargo-related equipment which local longshoremen cannot operate, and (2) Opening and closing of hatches operated automatically.
Pakistan (a) Longshore activities on shore. (b) Handling of mooring lines. (c) Exception: Operation of equipment which dock workers are not capable of operating.	Romania (a) All longshore activities. (b) Exceptions: (1) Operation of specialized shipboard equipment, and (2) Loading and discharge of cargo requiring special operations.	Tanzania (a) All longshore activities. (b) Exception: All longshore activities if local workers are paid as if they had done the work.
Panama (a) All longshore activities. (b) Exceptions: (1) Rigging of ship's gear, (2) Cargo handling operations with ship's gear, when port authority equipment is not available to load or unload a vessel.	St. Lucia (a) All longshore activities.	Thailand (a) Longshore activities on shore. (b) Exception: Longshore activities in private ports.
Papua New Guinea (a) All longshore activities. (b) Exceptions: (1) Opening and closing of hatches, and (2) Rigging of ship's gear.	St. Vincent and the Grenadines (a) All longshore activities.	Togo (a) All longshore activities. (b) Exceptions: (1) Operation of cargo-related equipment on board the ship, and (2) Opening and closing of hatches, upon the agreement of the port officer on duty.
Peru (a) All longshore activities. (b) Exceptions: (1) Handling of certain types of hazardous cargo, and (2) Operation of shipboard equipment requiring special training.	Saudi Arabia (a) All longshore activities.	Trinidad and Tobago (a) All longshore activities.
Philippines (a) All longshore activities. (b) Exceptions: (1) Activities on board ship, except for loading and discharge of cargo,	Senegal (a) All longshore activities. (b) Exceptions: (1) Opening and closing of hatches, and (2) Rigging of ship's gear.	
	Seychelles (a) All longshore activities. (b) Exceptions: (1) Opening and closing of hatches, and (2) Rigging of ship's gear.	

(b) Exceptions:

- (1) Opening and closing of hatches, if done automatically, and
- (2) Rigging of ship's gear.

Tunisia

- (a) All longshore activities.
- (b) Exception: When the number of local dock workers is insufficient or when the workers are not qualified to do the work.

Uruguay

- (a) Stowing, unstowing, loading and discharge, and related activities on board ships in commercial ports.
- (b) Cargo handling on the docks and piers of commercial ports.
- (c) Exception: Activities usually performed by the ship's crew, including operation of cargo-related equipment, opening and closing of hatches and rigging of ship's gear.

Vanuatu

- (a) All longshore activities on shore.

Venezuela

- (a) Longshore activities in private ports and terminals.

Western Samoa

- (a) All longshore activities.
- (b) Exceptions:
 - (1) Opening and closing of hatches, and
 - (2) Rigging of ship's gear.

Yemen

- (a) All longshore activities.

Zaire

- (a) All longshore activities.
- (b) Exception: Operation of cargo-related equipment, when authorized by the Port Authority.

Dated: May 16, 1996.

Alan P. Larson,

Acting Assistant Secretary, Economic and Business Affairs, Department of State.

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

RIN 1512-AA07

[TD ATF-375]

The Malibu-Newton Canyon Viticultural Area (95R-014P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in the State of California to be known as "Malibu-Newton Canyon." The petition for this viticultural area was filed by Mr. George Rosenthal, President of Rancho Escondido, Inc.

The "Malibu-Newton Canyon" viticultural area comprises approximately 850 acres within Newton Canyon, a bowl-shaped valley located on the south-facing side of the Santa Monica Mountains. Vineyards currently within the proposed viticultural area are located on the Rancho Escondido Estate. Rancho Escondido is comprised of approximately 157 acres, all of which lie within the proposed area. Approximately 14 of these acres are planted with premium wine producing vineyards. Varietals include Cabernet Sauvignon, Merlot, Cabernet Franc, Chardonnay and Petite Verdot. Currently, there are no wineries located within the proposed "Malibu-Newton Canyon" area.

ATF believes that the establishment of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make the wine were grown and enables consumers to better identify the wines they purchase.

EFFECTIVE DATE: June 13, 1996.

FOR FURTHER INFORMATION CONTACT: David Brokaw, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American

viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- (a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- (b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- (c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- (d) A description of the specific boundaries of the viticultural area, based on the features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and
- (e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF received a petition from Mr. George Rosenthal, President of Rancho Escondido, Inc., proposing to establish a new viticultural appellation in the Malibu area of Los Angeles County, California, to be known as "Malibu-Newton Canyon." The viticultural area, comprising approximately 850 acres, is located within Newton Canyon which is a bowl-shaped valley located on the south-facing side of the Santa Monica Mountains. Vineyards currently within the viticultural area are located on the Rancho Escondido Estate. Rancho Escondido is comprised of approximately 157 acres, all of which lie within the "Malibu-Newton Canyon" viticultural area. Approximately 14 of these acres are planted with premium wine producing vineyards. Varietals include Cabernet Sauvignon, Merlot, Cabernet Franc, Chardonnay and Petite Verdot. Currently, there are no wineries located within the "Malibu-Newton Canyon" viticultural area.

Notice of Proposed Rulemaking

In response to Mr. George Rosenthal's petition, ATF published a notice of proposed rulemaking, Notice No. 817, in the Federal Register on December 22, 1995 [60 FR 66535], proposing the establishment of the Malibu-Newton Canyon viticultural area. The notice requested comments from all interested persons by February 20, 1996.

Comments on Notice of Proposed Rulemaking

ATF did not receive any letters of comment in response to Notice No. 817.