

TREASURY DECISIONS — I

Subpart A — ALCOHOL

**TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE
TREASURY**

Fair Play Viticultural Area

27 CFR Part 9

T.D. ATF-440 Re: Notice No. 900

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

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is establishing a viticultural area located in southern El Dorado County, California, to be known as “Fair Play.” Brian Fitzpatrick, President of Fair Play Winery Association, filed the petition for this area. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase. It will also allow wineries to better designate the specific grape-growing area in which the grapes used in their wine were grown.

EFFECTIVE DATE: April 27, 2001.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226 (202-927-9347).

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

What Is ATF's Authority To Establish a Viticultural Area?

ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) on August 23, 1978. This decision revised the regulations in 27 CFR part 4, Labeling and Advertising of Wine, to 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 in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added 27 CFR part 9, American Viticultural Areas, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

What Is the Definition of an American Viticultural Area?

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

What Is Required To Establish a Viticultural Area?

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

Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Fair Play Petition

ATF received a petition from Brian Fitzpatrick, President of Fair Play Winery Association, proposing to establish a viticultural area in southern El Dorado County, California, known as "Fair Play." The viticultural area is located entirely within the existing "El Dorado" and "Sierra Foothills" viticultural areas described in 27 CFR 9.61 and 9.120.

The area encompasses approximately 33 square miles. The total acreage of vineyards is approximately 350 acres, of which 250 acres are currently in production. The viticultural area now boasts ten bonded wineries and a number of vineyards ranging in size from less than five acres to over seventy acres.

Notice of Proposed Rulemaking

In response to the petition, ATF published a notice of proposed rulemaking, Notice No. 900, in the Federal Register on July 25, 2000 (65 FR 45739), proposing the establishment of the Fair Play viticultural area. The notice requested comments from interested persons by September 25, 2000.

Comments on Notice of Proposed Rulemaking

ATF received one letter in response to Notice No. 900. Sherrie Busby-Graham and Elliot Graham wrote to express support for the establishment of the viticultural area and concurred with the change to the northern boundary proposed by the petitioner. The petitioner wrote to give additional information and suggested a change to the northern boundary. The specific proposal will be discussed in the boundary section of the supplementary information.

What Name Evidence Has Been Provided?

Fair Play viticultural area takes its name from an old gold mining camp during the California gold rush. Although Fair Play was at first only a mining camp, the town later became a trading center and post office for drift and hydraulic mines in the area. The Alta Californian newspaper dated December 21, 1853, mentions Fair Play as a prosperous little mining town with several stores and hotels.

Today, the name “Fair Play” is used to designate a former school, an existing crossroads store, and a farm road located within the boundaries. In 1998, residents of Fair Play petitioned the United States Postal Service to acknowledge Fair Play as a postal address. The petition was granted and Fair Play now shares the Zip Code, 95684, with Somerset.

The first commercial vineyard and winery in the viticultural area was established in 1887 by a Civil War veteran, Horace Bigelow. Bigelow planted 4,000 grape vines and by 1898 was producing between 600 and 1,000 gallons of wine each year. Today, the Fair Play viticultural area is gaining recognition as a wine growing area and is featured in the media, on some wine labels, and in the petitioner’s promotional materials. The following was provided as name evidence:

The Aukum, California 1952 (photorevised 1973) U.S.G.S. map used to show the original outlined boundaries proposed by the petitioner and show the town of Fair Play and Fair Play School located within the viticultural area;

Correspondence from Jim McBroom, Manager of Operations Programs Support with the United States Postal Service, indicating that Fair Play, California 95684 is an authorized last line mailing address;

An article about the history of the Fair Play area written in 1998 by Doug Noble, Democrat correspondent, for the Mountain Democrat;

Fair Play Winery Association’s 16th annual brochure advertising the “Fair Play Wine Festival;”

Fair Play Winery Association’s 17th annual brochure advertising the the “Fair Play Wine Festival;”

The Articles of Incorporation of the Fair Play Winery Association; and

An excerpt from a book in progress by historian Erick Costa called Gold and Wine, A History of Winemaking in El Dorado County, California.

What Boundary Evidence Has Been Provided?

The name “Fair Play” is used to designate the entire area bisected by Fair Play Road. The general boundaries are the canyon of the Middle Fork of the Cosumnes River to the north; rugged terrain and higher elevation to the east; a change in soils to the southeast and south; Cedar Creek running through a deep canyon to the southwest; Cedar Creek flowing into a short section of Scott Creek and into a mile long section of the South Fork of the Cosumnes River (near River Pines) thence northerly cross country to the Middle Fork of the Cosumnes River. In support of this approach, the petitioner provided a copy of U.S.G.S. map (Aukum, California) on which the original boundaries proposed by the petitioner are outlined and the town of Fair Play is prominently labeled. The petitioner also provided other maps that show that Fair Play Road runs through the viticultural area, beginning at Grays Corner (shown as Melsons Corner on the U.S.G.S. map) and running generally southeast, east and south to Omo Ranch Road. The Fair Play viticultural area primarily consists of those farms and ranches served by Fair Play Road and its “tributaries.”

Sherrie Busby-Graham and Elliot Graham noted in their comments that the area known as “Fair Play” extends more to the north than indicated by the boundaries proposed by the petitioner. During the comment period, the petitioner wrote to say that he had learned about an additional grower just outside of the proposed northern boundary and asked that the border be redrawn to include the vineyard. The petitioner asserts that this additional area possesses the same granitic sandy loam soil that is the benchmark of the Fair Play viticultural area. He suggested using the 2200 foot contour line where it intersects with Grizzly Flat Road, east of Somerset. Then following that line north and then east until it intersects with the section line between Sections 9 and 10. Then following that section line south to Grizzly Flat Road where it adjoins the original proposed boundary line. ATF is adopting this proposed change and amending the boundary to include the additional vineyard.

What Evidence Relating to Geographical Features Has Been Provided?

Soil: The Fair Play viticultural area is characterized by deep, moderately to well drained, granitic soils of the Holland, Shaver, and Musick series. These soils consist of sandy loams and coarse sandy loams, with an effective average rooting depth between 40 and 60 inches. The soil maps taken from the USDA Soil Survey show the specific areas where each of these soils predominate; the boundaries were specifically designed to include these three soil series, and to exclude other soils which are either not granitic, or shallow, or poorly drained. The areas to the north and east of the boundaries are predominately shallow granitic soils of the Chawanakee and Chaix series. The northern and eastern boundaries are drawn primarily based on terrain and ease of description, but with the intent to generally exclude these soils. The southeastern and southern boundaries of the Fair Play viticultural area, the waterways of Cedar Creek into Scott Creek into the South Fork of the Cosumnes River, lay out a clear geological demarcation where the granitic soils predominate and the volcanic soils begin. Thus, the Fair Play viticultural area has a soil association that sets it apart from the rest of the Sierra Foothills and El Dorado viticultural areas.

Terrain and Topography: The arable terrain within the Fair Play viticultural area is generally composed of rolling hillsides and rounding ridge tops. At these elevations (2,000-3,000) each vineyard's topographic location in relationship to the immediate surroundings is of utmost importance to minimize the negative effects of late spring frosts. Most of the existing vineyards are situated on the ridge tops or hillsides so there is lower ground for the cold air to drain.

To the east and southeast, the boundaries include terrain too rugged for commercial viticulture. This is also true of Coyote Ridge to the south. Although little vineyard activity is anticipated in these steep canyon lands, the use of the Middle Fork of the Cosumnes River, Cedar Creek, Scott Creek, and South Fork of the Cosumnes River make easily understood and prominent boundaries.

Elevation: The lowest elevations in the area, about 2,000 feet, occur along Perry Creek and the North and South Forks of Spanish Creeks where they flow west out of the Fair Play viticultural area. The lowest existing vineyards sit at about 2,000 feet near Mt. Aukum. The elevation rises to the north, east and south to a maximum of about 2,800 feet above Slug Gulch Road and Walker Ridge.

To the north, the steep sides of the canyon of the Middle Fork of the Cosumnes River are not suitable for viticulture. The bottom land along the river, ranging from 1,700 to 1,800 feet elevation, is at least two hundred feet lower in elevation than the lowest points included within the boundaries.

The rugged terrain east of the boundaries, and the volcanic "caps" to the southeast and south quickly rise above 2,800 feet.

Elevation is significant because of its effect on growing conditions in the Sierra Nevada Foothills.

Climatic Features: The U.S.D.A. Soil Survey shows that in this part of Sierra Foothills, rainfall generally increases along with the elevation. The isobars generally run from the northwest to southeast, similar to the general run of the elevation contour lines. The Fair Play viticultural area receives between 35 to 40 inches of rain in an average year, while the lower areas to the west and southwest of Fair Play receive 35 inches or less.

The U.S.D.A. chart for the length of growing season follows the reverse pattern; as elevation increases, the growing season decreases. Fair Play enjoys an average growing season of between about 230 and 250 days; the areas to the west and southwest show over 250 days. Thus, the Fair Play viticultural area enjoys more rainfall, but with a shorter growing season, than the areas to the west and southwest.

Based on the standard University of California at Davis (UCD) temperature summation definition of climatic regions or zones, the Fair Play viticultural area would appear to fall into high Region 3 (less than 3,500 degree days). The areas to the west and southwest fall into low Region 4 (over 3,500 degree days).

Regulatory Analyses and Notices

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

How Does the Regulatory Flexibility Act Apply to This Final Rule?

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

Does the Paperwork Reduction Act Apply to This Final Rule?

The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding Sec. 9.168 to read as follows:

§ 9.168 Fair Play.

(a) *Name.* The name of the viticultural area described in this section is “Fair Play.”

(b) *Approved Maps.* The appropriate maps for determining the boundary of the Fair Play viticultural area are three United States Geological Survey (U.S.G.S.) topographic maps (7.5 minute series; quadrangles). They are titled:

- (1) "Omo Ranch, California," 1952 (photorevised 1973).
- (2) "Aukum, California," 1952 (photorevised 1973).
- (3) "Camino, California," 1952 (photorevised 1973).

(c) *Boundaries.* The Fair Play viticultural area is located in El Dorado County, California and is located entirely within the existing Sierra Foothills and El Dorado viticultural areas. The boundary for Fair Play is as follows:

(1) The beginning point of the boundary is the intersection of the Middle Fork of the Cosumnes River and the U.S.G.S. map section line between Sections 26 and 27, T. 9 N., R. 11 E. ("Aukum" Quadrangle);

(2) From the beginning point, the boundary follows northeast along the Middle Fork of the Cosumnes River until it meets an unnamed medium-duty road (Mt. Aukum Road or El Dorado County Road E-16) just as it crosses onto the "Camino" Quadrangle map;

(3) The boundary continues then northeast along Mt. Aukum Road to its intersection with Grizzly Flat Road at the town of Somerset ("Camino" Quadrangle);

(4) The boundary continues east along Grizzly Flat Road to its intersection with the 2200" contour line.

(5) The boundary continues along the 2200" contour line north and then east until it intersects with the U.S.G.S. map section line between Sections 9 and 10, T. 9 N., R. 12 E. ("Camino" Quadrangle):

(6) The boundary then proceeds south along the U.S.G.S. map section line between Sections 9 and 10, T. 9 N., R. 12 E., to its intersection with the Middle Fork of the Cosumnes River ("Aukum" Quadrangle);

(7) The boundary then follows along the Middle Fork of the Cosumnes River in a southeasterly direction onto the "Omo" Quadrangle map and continues until it meets the range line between R. 12 E. and R. 13 E. ("Aukum" Quadrangle and "Omo Ranch" Quadrangle);

(8) The boundary then follows south along the range line between R. 12 E. and R. 13 E. to its intersection with an unnamed medium-duty road in T. 8 N. (Omo Ranch Road) ("Omo Ranch" Quadrangle);

(9) The boundary then continues west in a straight line approximately 0.3 miles to the point where Cedar Creek intersects with the 3200-foot contour line, within Section 1, T. 8 N., R. 12 E. ("Omo Ranch" Quadrangle);

(10) The boundary follows along Cedar Creek west and then southwest until it empties into Scott Creek ("Aukum" Quadrangle);

(11) The boundary then proceeds west along Scott Creek until it empties into the South Fork of the Cosumnes River ("Aukum" Quadrangle);

(12) The boundary continues west along the South Fork of the Cosumnes River to its intersection with the U.S.G.S. map section line between Sections 14 and 15, T. 8 N., R. 11 E. ("Aukum" Quadrangle); and

(13) Finally, the boundary follows north along the section line back to its intersection with the Middle Fork of the Cosumnes River, the point of the beginning. ("Aukum" Quadrangle).

Dated: December 20, 2000

Bradley A. Buckles,
Director

Dated: January 5, 2001

Timothy E. Skud,
Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE
TREASURY

**Realignment of the Boundary of the Walla Walla Valley Viticultural Area and
the Eastern Boundary of the Columbia Valley Viticultural Area**

27 CFR Part 9

T.D. ATF-441

ACTION: Treasury decision, final rule.

SUMMARY: This final rule extends the boundary of the Walla Walla Valley viticultural area. This action is the result of petitions filed by growers and winemakers located within the existing area and in the new area being added. This final rule also extends the boundary of the Columbia Valley viticultural area so that it coincides with the boundary of Walla Walla Valley viticultural area.

The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allow wineries to designate the specific areas where the grapes used to make the wine were grown and enable consumers to better identify the wines they purchase.

EFFECTIVE DATE: April 27, 2001.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-9347).

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 defined American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new part 9 to 27 CFR, providing 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 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.

Original Designation of the Walla Walla Valley and Columbia Valley Viticultural Areas

The Walla Walla Valley viticultural area was established by Treasury Decision (T.D.) ATF-165 on February 6, 1984 (49 FR 4374). The original petition, filed by the Walla Walla Valley Wine Growers Association, had requested designation of an area of approximately 300,000 acres. At the time of the original petition, ATF had been concerned that the total area to be designated was very large in proportion to the area used for viticulture. ATF and the petitioner agreed to reduce the size of the proposed area to encompass only the locations where grapes were being commercially grown. As approved, the Walla Walla Valley viticultural area consisted of approximately 260,000 acres, and had two wine producers and 60 acres of grapes. The area was within the counties of Walla Walla in Washington State and Umatilla in Oregon.

Later, when the Columbia Valley viticultural area was designated (T.D. ATF-190, November 13, 1984, [49 FR 44895-44899]), the Walla Walla Valley viticultural area was thought to be entirely within the Columbia Valley viticultural area. In preparation for the

current rulemaking, we reviewed the maps in question and discovered that there is an area approximately 3 miles long where the eastern boundary of the Walla Walla Valley viticultural area extends beyond the eastern boundary of the Columbia Valley viticultural area.

See our further discussion under “Extension of the Columbia Valley viticultural area.”

Petitions for Extension of the Boundaries of Walla Walla Valley

ATF received a petition from Mr. Gaynor S. Derby of Spring Valley Vineyards, requesting that the northern boundary of the existing Walla Walla Valley viticultural area be extended to add approximately 3500 acres to the northeastern part of the approved area. Later, we received a petition from the Walla Walla Valley Winegrowers, a group representing 20 wineries and vineyards located within the existing area or within the area they propose to add. Mr. Norm McKibben of Pepper Bridge Winery submitted the petition on behalf of the group. The Walla Walla Valley Winegrowers petitioned to expand the Walla Walla Valley viticultural area to include all the area requested in the original petition and additional land to the north. The petitioners referred to the evidence submitted with the original petition to show geographic distinctiveness and name recognition. The petitioners also provided supplemental information. Mr. Derby, who petitioned for a smaller extension of the existing area, agreed to support the larger extension proposed by the Walla Walla Valley Winegrowers.

Extension of the Columbia Valley Viticultural Area

This final rule also adjusts the boundary of the Columbia Valley viticultural area. In the original designation of the Columbia Valley viticultural area, ATF stated that the Walla Walla Valley viticultural area was entirely within the Columbia Valley viticultural area. As noted above, our recent review of the maps disclosed that there is a small area near Dixie, Washington, where the Walla Walla Valley viticultural area lies outside the boundaries of the Columbia Valley viticultural area. This overlap occurs in a place where the official boundary of the Columbia Valley moves from the 2000 foot contour line to a state highway. Therefore, we have amended the boundary so it follows the 2000 foot contour line for an additional 3 miles north, and then shifts to the state highway as before. This change extends the common boundary between the two viticultural areas and eliminates the area of overlap and any resulting confusion.

Notice of Proposed Rulemaking

In response to the petitions, ATF published a notice of proposed rulemaking, Notice No. 898, in the Federal Register on June 6, 2000 (65 FR 35871), proposing to revise the boundary of the Walla Walla Valley viticultural area and the eastern boundary of the Columbia Valley viticultural area. The notice requested comments from all interested persons by August 7, 2000. ATF received no comments concerning these proposals.

Evidence of Name

Based on historical materials supplied by petitioners in their original petition, there is substantial evidence indicating that the extension to the Walla Walla Valley viticultural area was locally and/or nationally known as Walla Walla Valley:

(a) The original petition stated that Walla Walla Valley “has been known as such since the time of settlement in the 1850’s, even prior to the creation of the states of Oregon and Washington.”

(b) The Walla Walla Winegrowers noted the U.S.G.S. map of Walla Walla uses the name “Walla Walla Valley” to label an area that corresponds to the original viticultural area and places the name in a second location to the north of the original boundary, in the extended area being added.

(c) Mr. Derby quoted Professor W. D. Lyman’s History of Walla Walla County, published in 1901. Professor Lyman described the Walla Walla Valley as “a large belt of agricultural land lying south of the Snake River and west of the Blue Mountains, extending across the Oregon Line on the south”—a description which fits the expanded area.

Evidence of Boundaries

The boundary of the original Walla Walla Valley viticultural area was limited to existing grape-growing areas for administrative reasons. In response to the new petitions, we reconsidered the evidence submitted in support of the original boundaries. Evidence provided in the original petition and in the new petitions show that the revised Walla Walla Valley viticultural area is delineated by boundaries corresponding to the following natural features:

On the southeast, by the point where the north and south branches of the Walla Walla River emerge from the mountainous Umatilla National Forest and join to form the Walla Walla River;

On the north, by the drainage divide between the Walla Walla River and the Touchet River; and

On the west, where the Walla Walla River empties into the Columbia River.

Distinguishing Features

According to the original petitioners and the petitioners in the current rulemaking, the entire Walla Walla Valley shares characteristics of topography, soil composition and climate that set it apart from the surrounding area. The evidence in the original petition was presented as applying to the entire valley, and not just to the area that ATF originally proposed for designation as the Walla Walla Valley viticultural area. Therefore, we will summarize the material that was originally published for comment in ATF Notice No. 471 on June 27, 1983 (48 FR 29541-29543), with the understanding that it applies equally to the extension of the Walla Walla Valley viticultural area. We will supplement this information with material supplied by the two petitions for extension.

In his petition to extend the Walla Walla Valley viticultural area, Mr. Gaynor S. Derby quoted from an article titled “Washington Wine and Dining” published in the November 15, 1998, issue of Wine Spectator:

Washington state straddles one of the world’s great geological divides—the Cascade Range. To the west of its summits, the maritime influence of the Pacific is supreme, and copious rains produce lush evergreen forests. * * * To the east, the damp sea breezes are blocked, the air warms and vineyards flourish with water provided by the Columbia River. The result is a growing and dynamic wine region. * * *

Topography

The original petition quoted the State of Washington’s Geology and Groundwater Resources of the Walla Walla River Basin, Washington-Oregon, published in 1965, to describe the topography of the area:

“In the Walla Walla River Basin, the main topographic unit is the valley plain, commonly called the Walla Walla Valley, which descends from about 1,500 feet at the foot of the mountain slopes to about 500 feet where the river cuts through the bedrock ridge near Divide. It lies astride the Oregon-Washington border.”

Like the original approved area, the extension to the Walla Walla Valley viticultural area ranges from 250 to 600 meters (820 to 1,968 feet) in elevation. It is drained by creeks that generally flow south and east into the Walla Walla River. North of the new boundary, the streams and creeks generally drain into the Touchet River, further to the north.

Soil

The original petition stated that the soils of the valley “are classified by the Soil Conservation Service as Soils of Bottom Lands and Low Terraces, Soils of Loessal Uplands, Soils of Loessal and Basaltic Uplands and Soils of Loessal and Lake-Laid Terraces, basically all loess derived soils.” Most of these soils are classed as I or II irrigated capability units by the Soil Conservation Service. By contrast, the soils west of the Touchet River and along the Snake and Columbia Rivers are classified as Class IV and VI. Soils to the east in the Blue Mountains are considered not suitable for cultivation. We note the areas chosen for soil contrast are outside the expansion to the area.

Climate

As noted in the original petition, the climate of the Walla Walla Valley is distinctive because it has a growing season between 190 and 220 days, the longest within the surrounding six counties. The original petition contrasted places within the Walla Walla Valley with places outside of the valley. The places chosen for contrast included Dayton, Prescott, and Eltopia, Washington, all to the north of the northern extension to the viticultural area.

The Walla Walla Valley receives an average of 12.5 inches of precipitation a year, light in the summer, increasing and peaking in the winter. The Columbia Basin to the

west and north receives less than 10 inches of precipitation in a year, and the Blue Mountains to the east and southeast receive 25-45 inches. Again, the places chosen for contrast are outside the extension of the viticultural area.

Boundaries

This final rule revises the boundary of the Columbia Valley viticultural area (described in Sec. 9.74) and revises the boundary of the Walla Walla viticultural area (described in Sec. 9.91).

U.S.G.S. Maps

The Walla Walla Winegrowers provided appropriate U.S.G.S. maps with their proposed boundaries prominently marked.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new recordkeeping or reporting requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 9.74 is amended by revising paragraphs (c)(43) and (c)(44) to read as follows:

§ 9.74 Columbia Valley.

* * * * *

(c) * * *

(43) Then southwest following Washington Highway 126 and U.S. Highway 12 through Marengo, Dayton, and Waitsburg to a point where an unnamed light-duty road leaves Highway 12 in an easterly direction in Minnick Station, Washington;

(44) Then east following the unnamed light-duty road for approximately 250 feet until it reaches the 2000 foot contour line;

* * * * *

Par. 3. Section 9.91 is revised to read as follows:

§ 9.91 Walla Walla Valley.

(a) *Name.* The name of the viticultural area described in this section is “Walla Walla Valley.”

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Walla Walla Valley viticultural area are two U.S.G.S. maps, in the scale 1:100,000. They are entitled:

- (1) “Walla Walla,” Washington-Oregon, 1980
- (2) “Pendleton,” Oregon-Washington, 1983

(c) *Boundaries.* The Walla Walla Valley viticultural area is located within Walla Walla County in Washington State and Umatilla County in Oregon. It is entirely within the Columbia Valley viticultural area. The boundaries are as follows:

(1) The beginning point is on the Walla Walla quadrangle map, in T8N/37E, at the point where the 2,000 foot contour line intersects with an unnamed light duty road approximately 250 feet east of U.S. Highway 12 in Minnick, Washington (on maps measured in metric units, this elevation is between the 600 and 650 meter contour lines),

(2) Then the boundary goes northwest in a straight line for 7 kilometers (km), until it intersects with a power line that runs between T8N and T9N,

(3) Then the boundary follows the power line west for 8 km, where it diverges from the power line and goes west-southwest in a straight line for approximately 33 km to the intersection of 2 unnamed light duty roads in the area marked Ninemile Canyon in the southwest corner of T8N/R33E,

(4) Then the boundary goes south-southwest in a straight line approximately 8 km, until it reaches U.S. Highway 12, about 2.5 km east of Reese, Washington,

(5) Then the boundary goes south in a straight line for approximately 8 km, crossing the Washington-Oregon state line and moving onto the Pendleton U.S.G.S. map, where it meets the 450 m contour line in T6N/R32E, near an unnamed peak with an elevation of 461 m,

(6) Then the boundary follows the 450 m contour line in a generally southeasterly direction until it intersects Dry Creek in T4N/R35E,

(7) Then the boundary goes southeast along Dry Creek (Oregon) until it reaches the 2000 foot contour line,

(8) Then the boundary follows the 2000 foot contour line in a generally northeasterly direction, crossing the Oregon-Washington state line and returning to the Walla Walla U.S.G.S. map, until it reaches the point of beginning.

Signed: October 31, 2000

Bradley A. Buckles,
Director

Approved: November 14, 2000

Timothy E. Skud,
Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE
TREASURY

Formulas for Denatured Alcohol and Rum

27 CFR Parts 19 and 21

T.D. ATF-442; Ref: Notice No. 832

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

ACTION: Treasury decision, final rule.

SUMMARY: This final rule amends the regulations in 27 CFR Parts 19 and 21 by updating the information relating to the formulation of completely denatured alcohol (CDA), specially denatured alcohol (SDA), and specially denatured rum (SDR); the denaturants authorized for use in the manufacturing of these formulations; and the specifications for these denaturants. The updates include removing the proprietary brand name "BITREX" listed with the denaturant denatonium benzoate, incorporating an ATF ruling that approves the use of two substitute denaturants, and making other amendments to provide clarity.

DATES: This rule is effective on March 1, 2001.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202-927-9347) or e-mail at aletob@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

27 CFR Part 21 contains listings of information relating to the formulation of CDA, SDA, and SDR, to the specifications for denaturants and to the denaturants authorized for use in the formulation of CDA, SDA, and SDR. ATF is authorized under Sec. 5242 of the Internal Revenue Code of 1986 to prescribe the character and quantity of approved denaturing materials. Pursuant to Sec. 21.91, ATF may authorize substitutions or variations from the specified list of denaturants upon application filed with ATF by the denaturer. This final rule amends Part 21 by incorporating additional denaturants that have been approved pursuant to such applications. Additionally, this final rule incorporates several technical corrections.

Substitute Denaturants

ATF Ruling 94-4 approved the use of heptane as a substitute denaturant for toluene in SDA Formula No. 2-B (SDA 2-B) and alpha terpineol as a substitute denaturant in SDA Formula No. 38-B (SDA 38-B).

Heptane is currently approved as a substitute denaturant for rubber hydrocarbon solvent in SDA 28-A. This ruling allows for the use of heptane as a substitute, on an equal (1:1) basis, for any one of the denaturants (toluene, benzene or rubber hydrocarbon solvent) in SDA 2-B.

Alpha terpineol, having similar specifications to those of pine oil, N.F., an approved denaturant for SDA 38-B, is now approved for use as a substitute denaturant in SDA 38-B.

Removal of a Proprietary Name

This final rule removes the proprietary brand name "BITREX" each place it appears in parts 19 and 21. The use of the proprietary brand name "BITREX" in conjunction with

the approved denaturant denatonium benzoate, N.F. may be mistakenly considered a product endorsement by ATF over all over proprietary names.

Other Changes

27 CFR 21.6 and 21.141 are amended to correctly cite referenced information.

Notice of Proposed Rulemaking

On July 31, 1996, ATF published a notice of proposed rulemaking (Notice No. 832, 61 FR 39929-39931) to solicit public comment on regulations to update the information provided in parts 19 and 21 relating to the formulation of CDA, SDA, and SDR; the denaturants authorized for use in the manufacturing of these formulations; and the specifications for these denaturants. The comment period closed on September 30, 1996.

Comments on the NPRM

ATF did not receive any comments in response to Notice 832, therefore, most of the amendments proposed in Notice No. 832 have been adopted in this final rule.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new reporting or recordkeeping requirements.

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. The regulations provide industry members with the most current listings of denaturants, denatured alcohol and rum formulations and their specifications. The regulations will not increase recordkeeping or reporting requirements. Accordingly, a regulatory flexibility analysis is not required because this final rule will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Internal Revenue Code, the NPRM preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration, for comment on its impact on small business. The Chief Counsel for Advocacy did not submit any comments.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Chemicals, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

27 CFR Part 21

Alcohol and alcoholic beverages, Authority delegation, Chemicals, Gasohol.

Authority and Issuance

Accordingly, ATF is amending chapter I of title 27 of the Code of Federal Regulations as follows:

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for Part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004-5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111-5113, 5142, 5143, 5146, 5171-5173, 5175, 5176, 5178-5181, 5201-5204, 5206, 5207, 5211-5215, 5221-5223, 5231, 5232, 5235, 5236, 5241-5243, 5271, 5273, 5301, 5311-5313, 5362, 5370, 5373, 5501-5505, 5551-5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.460 [Amended]

Par. 2. Amend Sec. 19.460(a) by removing the word “(BITREX)”.

§ 19.1005 [Amended]

Par. 3. Amend Sec. 19.1005(c)(2) by removing the word “(Bitrex)”.

PART 21—FORMULAS FOR DENATURED ALCOHOL AND RUM

Par. 4. The authority citation for Part 21 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5242, 7805.

§ 21.32 [Amended]

Par. 5. Amend Sec. 21.32(a) by removing the word “(BITREX)”.

Par. 6. Revise Sec. 21.33(a) to read as follows:

§ 21.33 Formula No. 2-B

(a) *Formula.* To every 100 gallons of alcohol add:

One-half gallon of benzene, 1/2\ gallon of rubber hydrocarbon solvent, 1/2\ gallon of toluene, or 1/2\ gallon of heptane.

* * * * *

§ 21.65 [Amended]

Par. 7. Amend Sec. 21.65(a) by adding the words “Alpha terpineol” to the top of the list of substances.

§ 21.76 [Amended]

Par. 8. Amend Sec. 21.76(a) by removing the word “(BITREX)”.

§ 21.91 [Amended]

Par. 9. Amend the second sentence of Sec. 21.91 by removing the word “of” where it appears for the second time and adding the word “or” in its place.

§§ 21.95 through 21.132 [Redesignated as Secs. 21.96 through 21.133]

Par. 10. Redesignate Sec. 21.95 through Sec. 21.132 as Sec. 21.96 through Sec. 21.133.

Par. 11. Add a new Sec. 21.95 to read as follows:

§ 21.95 Alpha terpineol.

- (a) Boiling point at 752mm 218.8-219.4 deg.C.
- (b) Density at 15 deg. 0.9386.
- (c) Refractive index at 20 deg. 1.4831.

§ 21.141 [Amended]

Par. 12. Amend Sec. 21.141 by adding “40-B” to the end of the list in the column entitled “Formulas authorized” for the entry “External pharmaceuticals, miscellaneous, U.S.P. or N.F.”, “Code No. 249.”

§ 21.151 [Amended]

Par. 13. Amend Sec. 21.151 as follows:

- (a) Add the words “Alpha Terpineol * * * S.D.A. 38-B” directly after the words “Almond oil, bitter, N.F.X. * * * S.D.A. 38-B”;
- (b) Remove the word “(BITREX)” from the reference to “Denatonium benzoate, N.F. S.D.A. 1, 40-B”; and
- (c) Add “2-B” between “S.D.A.” and “28-A” across from “Heptane.”

Signed: January 4, 2001

Bradley A. Buckles,
Director

Approved: February 1, 2001

Timothy E. Skud,
Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE
TREASURY

Distribution and Use of Tax-Free Alcohol

27 CFR Part 22

T.D. ATF-443; Ref: Notice No. 828

ACTION: Treasury decision, final rule.

SUMMARY: This final rule amends the regulations in 27 CFR part 22 by eliminating the requirement for users of tax-free alcohol to file a bond. It also liberalizes certain qualification requirements relating to tax-free alcohol user permits. ATF believes that these revisions will greatly reduce and simplify the qualification process for tax-free alcohol permits.

DATES: This rule is effective on May 1, 2001.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202-927-9347) or e-mail at alctob@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

There are certain registration requirements under the law and its implementing regulations that must be met prior to the issuance of a permit to withdraw and use tax-free alcohol. Once such registration requirements are met, the applicant is issued a tax-free alcohol users permit and may commence conducting any of the uses authorized under the law and regulations for tax-free alcohol permittees. The permittee is allowed to purchase and acquire alcohol from a registered distilled spirits plant (DSP) free of the excise tax payments normally required to be made by the DSP proprietor.

Authorized users of tax-free alcohol include any State or political subdivision of a State, or the District of Columbia acquiring the alcohol for nonbeverage purposes. Tax-free alcohol may also be used by any educational organization (exempt from income tax), scientific university or college of learning, laboratory for use exclusively in scientific research, hospital, blood bank, sanitarium, pathological laboratory exclusively engaged in making analyses, or tests, for hospitals or sanitaria, or clinic operated for charity and not for profit.

Notice of Proposed Rulemaking

On June 13, 1996, ATF published a notice of proposed rulemaking (Notice No. 828, 61 FR 30019) to solicit public comment on proposed regulations that would eliminate the bonding requirements for tax-free alcohol users. ATF also proposed to revise the qualification requirements for obtaining a permit to withdraw and use tax-free alcohol. The public was invited to submit written comments on this notice for a period of 60 (sixty) days ending August 12, 1996.

Comments on the NPRM

In response to Notice 828, ATF received two written comments. Comments were received from: the Distilled Spirits Council of the United States (DISCUS), and the Surety Association of America.

Bonds and Consents of Surety

As discussed in Notice No. 828, 26 U.S.C. 5272 provides that bond coverage may be required as part of the tax-free alcohol permit qualification process. Prior to 1985, the regulations in 27 CFR part 22 required that every applicant, with certain exceptions, obtain a bond prior to issuance of a permit. Then, in 1985, the tax-free regulations

were revised and the exemption from bond coverage was expanded. See T.D. ATF-199 (50 FR 9152). Under the revisions adopted in 1985, the percentage of users of tax-free alcohol who were exempt from filing a surety bond increased from 36 percent to 75 percent.

Based on the post-1985 experience in administering part 22, ATF concluded that bond coverage should no longer be required of any applicant for a tax-free alcohol permit. ATF believed that elimination of the bond requirement in part 22 would result in substantially reduced administrative and financial burdens on the tax-free alcohol permittees.

Accordingly, in Notice No. 828, ATF proposed to eliminate the requirement to obtain a bond.

In response to this proposal, DISCUS submitted a comment stating that they support all efforts by ATF to eliminate unnecessary regulation and to reduce the administrative burdens imposed upon industry.

The Surety Association of America commented against this proposal. They stated that “the ATF is overlooking the importance of the bond requirement in preventing losses. The bond provision may be one of the primary reasons why the experience has been favorable, and without it, we believe the ATF runs the risk of losing tax revenue without a means of recapture.”

While ATF agrees that bond requirements for tax-free alcohol users may have reduced the risk of tax revenue losses at some time in the past, our experience since 1985 indicates that tax-free alcohol users pose a minimal risk to the revenue. Further, the elimination of the bond requirement does not leave the ATF “without a means of recapture.” Any permittee who uses tax-free alcohol in a manner that violates the laws and regulations is still directly liable for the tax as provided in 26 U.S.C. 5001(a)(4).

In summary, ATF has concluded that the bond requirement in 27 CFR part 22 is unnecessary to protect the revenue and the proposal to eliminate the bond requirement for tax-free alcohol users has been adopted in this final rule.

Qualification Requirements

Section 5271 of the Internal Revenue Code of 1986 requires the submission of an application before a permit may be issued to procure or use tax-free alcohol. Regulations have required the submission of a detailed application with supporting data by all applicants. The appropriate ATF officer is authorized to waive some of the detailed data for applicants who are a State, political subdivisions thereof, or the District of Columbia or whose annual withdrawal and usage of tax-free alcohol will not exceed 1,500 proof gallons.

In Notice No. 828, ATF proposed that this waiver should be available to all applicants when the appropriate ATF officer concludes that the revenue is adequately protected with respect to the person submitting the application.

In response to this proposal, the DISCUS submitted a comment that expressed their support. No one commented in opposition to this proposal. Accordingly, the proposal has been adopted in this final rule.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The regulations will give ATF specific regulatory authority to relax and remove certain registration requirements. A copy of the proposed rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new reporting or recordkeeping requirements.

Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 22

Administrative practice and procedure, Advertising, Alcohol and alcohol beverages, Authority delegations (Government agencies), Claims, Excise taxes, Reporting and recordkeeping requirements, Surety bonds.

Authority and Issuance

Accordingly, title 27, Code of Federal Regulations part 22 is amended as follows:

PART 22—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL

Paragraph 1. The authority citation for part 22 continues to read as follows:

Authority: 26 U.S.C. 5001, 5121, 5142, 5143, 5146, 5206, 5214, 5271-5276, 5311, 5552, 5555, 6056, 6061, 6065, 6109, 6151, 6806, 7011, 7805; 31 U.S.C. 9304, 9306.

§ 22.21 [Amended]

Par. 2. Amend Sec. 22.21(a) by removing the word “bonds” from the first sentence.

§ 22.25 [Removed]

Par. 3. Remove Sec. 22.25.

§ 22.26 [Redesignated]

Par. 4. Redesignate Sec. 22.26 as Sec. 22.25.

§ 22.27 [Redesignated]

Par. 5. Redesignate Sec. 22.27 as Sec. 22.26.

§ 22.43 [Amended]

Par. 6. Amend Sec. 22.43 by revising paragraphs (a)(2) and (b) to read as follows:

§ 22.43 Exceptions to application requirements.

(a) * * *

(2) *Applications.* Form 5150.22, filed by applicants, where the appropriate ATF officer has determined that the waiver of such requirements does not pose any jeopardy to the revenue or a hindrance of the effective administration of this part.

(b) The waiver provided for in this section will terminate for a permittee, other than States or political subdivisions thereof or the District of Columbia, when the permittee files an application to amend the permit and the appropriate ATF officer determines that the conditions justifying the waiver no longer exist. In this case, the permittee will furnish the information in respect to the previously waived items, as provided in Sec. 22.57(a)(2).

§ 22.59 [Amended]

Par. 7. Amend Sec. 22.59 by removing the second sentence.

§ 22.60 [Amended]

Par. 8. Amend Sec. 22.60 as follows:

- (a) Remove paragraph (b);
- (b) Redesignate paragraph (c) as paragraph (b); and
- (c) Redesignate paragraph (d) as paragraph (c).

§ 22.62 [Amended]

Par. 9. Amend Sec. 22.62 by removing the last sentence.

§ 22.63 [Amended]

Par. 10. Amend Sec. 22.63 as follows:

- (a) Remove the paragraph letter and title designation “(a) Permit”; and
- (b) Remove paragraph (b).

§ 22.68 [Amended]

Par. 11. Amend Sec. 22.68 as follows:

- (a) Remove the paragraph letter and title designation “(a) Notice”; and
- (b) Remove paragraph (b).

Subpart E—[Removed and Reserved]

Par. 12. Remove and reserve Subpart E (Bonds and Consent of Surety).

§ 22.152 [Amended]

Par. 13. Amend Sec. 22.152 as follows:

- (a) Remove paragraph (b); and
- (b) Redesignate paragraph (c) as paragraph (b).

Bradley A. Buckles,
Director

Approved: February 1, 2001

Timothy E. Skud,
Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE
TREASURY

West Elks Viticultural Area

27 CFR Part 9

T.D. ATF-445; RE: Notice No. 904

ACTION: Treasury decision, final rule.

SUMMARY: This final rule establishes a viticultural area to be known as “West Elks,” located in Delta County, Colorado. This action is the result of a petition filed on behalf of several grape growers and winery owners in the area.

The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allow wineries to designate the specific areas where the grapes used to make the wine were grown. This enables consumers to better identify the wines they may purchase.

EFFECTIVE DATE: May 7, 2001.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-9347).

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

What Is ATF's Authority To Establish a Viticultural Area?

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624). This decision revised the regulations in 27 CFR part 4, Labeling and Advertising of Wine, to 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 in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new part 9 to 27 CFR, American Viticultural Areas, for providing the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

What Is the Definition of an American Viticultural Area?

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

What Is Required To Establish a Viticultural Area?

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

Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) that distinguish the viticultural features of the proposed area from surrounding areas;

A description of the specific boundaries of the viticultural area, based on features that can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

West Elks Petition

ATF received a petition from Barbara E. Heck proposing to establish a viticultural area in Delta County, Colorado, known as "West Elks." The area encompasses approximately 75 square miles. Over 84 acres of vineyards are currently planted in West Elks and the area presently boasts eighteen vineyard and/or winery businesses.

Notice of Proposed Rulemaking

In response to the petition, ATF published a notice of proposed rulemaking, Notice No. 904, in the Federal Register on October 16, 2000, (65 FR 61129), proposing the establishment of the West Elks viticultural area. The notice requested comments from interested persons by December 15, 2000.

Comments on Notice of Proposed Rulemaking

No comments were received as a result of Notice No. 904.

What Name Evidence Has Been Provided?

The West Elks viticultural area takes its name from the West Elk Mountains located just east of the area. Each vineyard in the area has a magnificent view of the West Elk Mountains. The petitioner submitted the following as evidence of name recognition:

Brochure from the U.S. Department of Agriculture Forest Service indicating that the proposed "West Elks" viticulture area is known as West Elk Wilderness;

Brochure from the Colorado State Historical Society and Delta County Tourism mapping the West Elk Loop which runs through the proposed "West Elks" viticultural area;

Delta County Area Map on which the West Elk Mountains are prominently labeled; and

United States Department of the Interior topographic map on which the West Elk Wilderness and the West Elk Mountains are prominently labeled.

News article from the Delta County Independent which depicts a 1855 map on which the Elk Mountains are prominently labeled;

Delta County Historical Society map which also shows the Elk Mountains.

What Boundary Evidence Has Been Provided?

The West Elks viticultural area is located on mesa lands. Its borders are the West Elk Mountains to the east and the higher Grand Mesa to the north. To the south, Crawford and Fruitland Mesa have a higher elevation and the plateau climbs until it reaches the north rim of the Black Canyon of the Gunnison. To the west lie the Adobe Badlands in which very little grows.

What Evidence Relating to Geographical Features Has Been Provided?

Soil: The soils of the West Elks viticultural area distinguish it from the surrounding areas. The petitioner provided a General Soil Map which indicates that the West Elks viticultural area is comprised mostly of Aqua Fria-Saration soils, which are deep and moderately deep well-drained stony soils that formed in outwash alluvium derived from igneous rock. To the north of the viticultural area, the soils change to Delson-Cerro soils and to the east the soils are Fughes-Bulkley, Absarokee-Beenom and Delson-Cerro. Billings-Gullied land soils are found to the south of the viticultural area.

Elevation: The boundaries of the West Elks viticultural area are defined by elevation. The far eastern boundary, Juanita Junction, sits at 5942 feet. The eastern line sits mainly at 6200 feet. The southern border of the viticultural area follows section lines of the U.S.G.S. maps that have elevations that range from 5300 to over 5800 feet. The northern border has an elevation range from 6900 to 5900 feet.

The elevations of the areas surrounding the West Elks viticultural area are much higher. Mountains surround the area to the east with elevations reaching 11,000 feet. The Grand Mesa is located to the north of the viticultural area with elevations reaching 10,000 feet at the top. To the south, Crawford and Fruitland Mesa have higher elevations and the plateau climbs until it reaches the north rim of the Black Canyon of the Gunnison. To the west, the Adobe Badlands, on which very little grows, and the Redlands Mesa, which sits above 6200 feet, separate the West Elks viticultural area from Delta, Cedaredge and the Surface Creek areas. The farming area to the east of Delta sits under 5000 feet elevation, which indicates a longer growing season than that of the West Elks viticultural area.

The high elevation of the viticultural area creates a fruit that has tremendous flavor. The area is completely protected and sheltered by lofty mesas and mountain ranges. The elevations of the surrounding areas help protect the viticultural area from severe storms and climatic disturbances, which often injure or destroy fruit.

Climate: The climate of the West Elks viticultural area is rather mild. With over 300 full sun days a year, grape sugar contents are high. The West Elk Loop Scenic and Historical Byway brochure states “. . . warm days, cool nights, and the so-called Million Dollar Breeze which flows down valley enhance the growing season.” The areas surrounding the West Elks viticultural area are much cooler due to their higher elevation.

Regulatory Analyses and Notices

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

How Does the Regulatory Flexibility Act Apply to This Rule?

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

Does the Paperwork Reduction Act Apply to This Rule?

The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Alcohol and alcoholic beverages, Consumer protection, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding Sec. 9.172 to read as follows:

§ 9.172 West Elks.

(a) *Name*. The name of the viticultural area described in this section is "West Elks."

(b) *Approved Maps*. The appropriate maps for determining the boundary of the West Elks viticultural area are four United States Geological Survey (U.S.G.S.) topographic maps (Scale: 1:250,000). They are titled:

- (1) Lazear Quadrangle (Colorado-Delta Co. 1955 (photorevised 1978));
- (2) Hotchkiss Quadrangle (Colorado-Delta Co. 1965 (photorevised 1979));
- (3) Paonia Quadrangle (Colorado-Delta Co. 1965 (photorevised 1979)); and
- (4) Bowie Quadrangle (Colorado-Delta Co. 1965 (photorevised 1978)).

(c) *Boundaries*. The West Elks viticultural area is located in eastern Delta County, Colorado. The beginning point is found on the "Bowie Quadrangle" U.S.G.S. map at the $\frac{1}{4}$ corner common to Sections 19 and 20, Township 13 South, Range 91 West (T. 13 S., R. 91 W.);

(1) The boundary proceeds east following the center subdivision lines of Sections 20 and 21 to its intersection with Colorado Highway 133;

(2) Then northeasterly following Colorado Highway 133 to its intersection with the N-S center subdivision line of Section 14, T. 13 S., R. 91 W., near Juanita Junction;

(3) Then south following the center subdivision line to its intersection with the North Fork of the Gunnison River;

(4) Then southwesterly following the North Fork of the Gunnison River to its intersection with the Stewart Ditch in the extreme southern part of Section 15, T. 13 S., R. 91 W.;

(5) Then southwesterly following the Stewart Ditch to its intersection with the section line common to Sections 21 and 28, T. 13 S., R. 91 W.;

(6) Then east following the section line common to Sections 21 and 28 to its intersection with the 6000 foot contour;

(7) Then southerly following the 6000 foot contour to its second intersection with the section line common to Sections 3 and 4, T. 14 S., R. 91 W., located on the Paonia, Colo. U.S.G.S. map;

(8) Then south following the section line common to Sections 3 and 4 to its intersection with the 6200 foot contour;

(9) Then southerly following the 6200 foot contour to its intersection with the section line common to Sections 16 and 17, T. 14 S., R. 91 W.;

(10) Then south following the section line common to Sections 16 and 17 to the point of intersection of Sections 16, 17, 20 and 21;

(11) Then west following the section line common to Sections 17 and 20 to the point of intersection of Sections 17, 18, 19 and 20;

(12) Then south following the section line common to Sections 19 and 20 to the N1/16 corner common to Sections 19 and 20;

(13) Then west following the subdivision line across Section 19 to the N1/16 corner common to Section 19, T. 14 S., R. 91 W. and Section 24, T. 14 S., R. 92 W.;

(14) Then south following the range line between R. 91 W. and R. 92 W. to the point of intersection between Sections 19 and 30, T. 14 S., R. 91 W. and Sections 24 and 25, T. 14 S., R. 92 W.;

- (15) Then west following the section line common to Sections 24 and 25 to the point of intersection between Sections 23, 24, 25 and 26, located on the Hotchkiss, Colo. U.S.G.S. map;
- (16) Then south following the section line common to Sections 25 and 26 to the point of intersection between Sections 25, 26, 35 and 36;
- (17) Then west following the section lines common to Sections 26 and 35 and Sections 27 and 34 to the point of intersection between Sections 27, 28, 33 and 34;
- (18) Then south following the section line common to Sections 33 and 34 to the point of intersection between Sections 33 and 34, T. 14 S., R. 92 W. and Sections 3 and 4, T. 15 S., R. 92 W.;
- (19) Then west following the township line between T. 14 S. and T. 15 S. approximately three miles to the point of intersection between Section 31, T. 14 S., R. 92 W., Section 6, T. 15 S., R. 92 W., Section 1, T. 15 S., R. 93 W., and Section 36, T. 14 S., R. 93 W.;
- (20) Then south following the range line between R. 92 W. and R. 93 W. to the point of intersection between Sections 6 and 7, T. 15 S., R. 92 W. and Sections 1 and 12, T. 15 S., R. 93 W.;
- (21) Then west following the section lines common to Sections 1 and 12 and Sections 2 and 11 to its intersection with the North Fork of the Gunnison River, located on the Lazear, Colo. U.S.G.S. map;
- (22) Then westerly following the North Fork of the Gunnison River to its intersection with Big Gulch in the extreme northeastern corner of Section 6, T. 15 S., R. 93 W.;
- (23) Then northerly following Big Gulch to its intersection with the section line common to Sections 17 and 18, T. 14 S., R. 93 W.;
- (24) Then north following the section lines common to Sections 17 and 18, Sections 7 and 8, and Sections 5 and 6 to the point of intersection between Sections 5 and 6, T. 14 S., R. 93 W. and Sections 31 and 32, T. 13 S., R. 93 W.;
- (25) Then east following the township line between T. 13 S. and T. 14 S. approximately two miles to the point of intersection between Sections 3 and 4, T. 14 S., R. 93 W. and Sections 33 and 34, T. 13 S., R. 93 W.;
- (26) Then south following the section line common to Sections 3 and 4 to the point of intersection between Sections 3, 4, 9 and 10;
- (27) Then east following the section lines for approximately 6 miles to the point of intersection between Sections 3, 4, 9 and 10, T. 14 S., R. 92 W., located on the Hotchkiss, Colo. U.S.G.S. map;
- (28) Then north following the section line common to Sections 3 and 4 to the point of intersection between Sections 3 and 4, T. 14 S., R. 92 W. and Sections 33 and 34, T. 13 S., R. 92 W.;
- (29) Then east following the township line between T. 13 S. and T. 14 S. to its intersection with the Fire Mountain Canal in the southwestern corner of Section 35, T. 13 S., R. 92 W.;
- (30) Then northeasterly following the Fire Mountain Canal through the extreme northwest corner of the Paonia, Colo. U.S.G.S. map to its intersection with the section line common to Sections 29 and 30, T. 13 S., R. 91 W., located on the Bowie, Colo. U.S.G.S. map;

(31) Then north following the section lines common to Sections 29 and 30 and Sections 19 and 20 to the 1/4 corner common to Sections 19 and 20, the point of beginning.

Dated: February 1, 2001

Bradley A. Buckles,
Director

Approved: February 15, 2001

Timothy E. Skud,
Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement)