

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

Red Mountain Viticultural Area

T.D. ATF-448

27 CFR Part 9

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

ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision will establish a viticultural area within the State of Washington to be called “Red Mountain.” The new viticultural area is within Benton County and entirely within the existing Yakima Valley viticultural area as described in 27 CFR 9.69. This viticultural area is a result of a petition submitted by Mr. Lorne Jacobson of Hedges Cellars.

EFFECTIVE DATE: June 11, 2001.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, Regulations Division, 111 W. Huron Street, Room 219, Buffalo, New York 14202-2301, (716) 551-4048.

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 on wine labels and in wine advertisements. 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?

An American viticultural area is a delimited grape-growing region distinguishable by geographic 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 characteristics (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 (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Rulemaking Proceeding

Red Mountain Petition

Mr. Lorne Jacobson of Hedges Cellars petitioned ATF for the establishment of a viticultural area within the State of Washington to be known as "Red Mountain." The viticultural area is entirely within the existing Yakima Valley viticultural area described in 27 CFR 9.69 and encompasses approximately 4,040 acres, of which approximately 600 acres are planted to vineyards.

Comments to Notice of Proposed Rulemaking

A Notice of Proposed Rulemaking, Notice No. 897, was published in the Federal Register on May 19, 2000, requesting comments from all interested persons concerning the proposed viticultural area. ATF received nine letters of comment in response to this notice. A majority of these supported the adoption of the viticultural area as proposed.

Two dissenting letters of comment were received. One was from Evelyn Skelton, owner of Oakwood Cellars, a winery just outside the viticultural area boundaries. The other commenter, an area resident and self-described wine enthusiast, submitted comments nearly identical to those of Ms. Skelton.

In her comments, Ms. Skelton supported the creation of the Red Mountain viticultural area, but proposed amending the western boundary to include her vineyard and winery. Oakwood Cellars is immediately west of the proposed viticultural area, within 1,000 feet

of the Yakima River, at an approximate elevation of 450-480 feet. Ms. Skelton argued that the use of the 560-foot elevation line as part of the boundary was arbitrary, and that soil and climate conditions at lower elevations are similar to those in the proposed area. She further argued that the evidence presented by the petitioner for this boundary was vague, and that scientific criteria should be used to determine the boundary. Ms. Skelton did not, however, submit any evidence to support her contention that the conditions on her property are similar to those in the viticultural area.

Response of the Petitioner

The petitioner, in counter comments, argued that the criteria used to determine the western boundary were not arbitrary, but based on scientific data. He maintained that Oakwood Cellars and other sites adjacent to the Yakima River have different soils and growing conditions than those on Red Mountain and should not be included in the viticultural area. Along with his comments, the petitioner submitted the following maps:

Soil survey maps issued by the Soil Conservation Service, U.S. Department of Agriculture, in cooperation with the Washington Agricultural Experiment Station;

Maps depicting flood hazard areas issued by the Federal Emergency Management Agency (FEMA); and

A land use map issued by the Benton County Planning Department.

The petitioner noted that all these maps show a delineation between the land immediately adjacent to the Yakima River and the land within the viticultural area. The FEMA map, for example, designates the land adjacent to the river as a floodplain—the viticultural area, at a higher elevation, is not part of the floodplain. The land use map designates the area within the viticultural area as an agricultural district zone, while land adjacent to the river is part of a different zone.

The Soil Conservation Service maps, however, are the most detailed and best depict differences between the Oakwood Cellars site and Red Mountain. These maps clearly show that the soils in the Oakwood Cellars property belong to a different soil association than those in the Red Mountain viticultural area. Oakwood Cellar's property lies on soils within the Hezel-Quincy-Burbank association, with the predominant soil being Pasco silt loam. The Soil Conservation Service describes Pasco silt loam as an alluvial, poorly draining, and very fertile soil. In contrast, Red Mountain's soils belong to the Warden-Shano association. Soils within this association are light and well draining. According to the petitioner, these soil qualities cause vine stress, which in turn results in a higher caliber of fruit.

The petitioner later filed additional comments proposing to enlarge the viticultural area by amending the southern boundary. Instead of using State Highway 224 as the southern boundary, the boundary would be moved south to a creekbed running along the southern edge of Red Mountain. This boundary change adds approximately 640 acres to the viticultural area. The petitioner gave three reasons for adding this parcel:

First, the soils in the additional area are the same as those on the rest of Red Mountain. The Soil Conservation Service maps verify that the soils in the new area are also in the Warden-Shano soil association.

Second, the new boundary—a creek bed—is a geographical feature, while the old boundary—a state highway—was not. Ideally, the petitioner noted, a viticultural area should be delineated by geographic, not man-made, features.

Last, the new area encompasses land recently purchased by Evelyn Skelton of Oakwood Cellars, which, according to the petitioner, shares the distinctive characteristics of the rest of Red Mountain.

Conclusion

After careful analysis of the comments, ATF has concluded that the evidence supports retaining the original western boundary, and amending the southern boundary as proposed by the petitioner.

The evidence submitted by the petitioner, particularly the soil maps, strongly supports the petitioner's position that the land along the Yakima River does not share the same geographical characteristics as those that distinguish Red Mountain from the surrounding areas. While Ms. Skelton has stated that the soil on her Yakima River vineyard is the same as that on Red Mountain, she has offered no evidence to support this assertion. The evidence given by the petitioner, on the other hand, contradicts her position. The proposal to amend the southern boundary is, in contrast, well supported by the evidence. The Soil Conservation Service maps depict the additional land as having the same soils as the rest of Red Mountain, soils that are not found in the surrounding area.

The effect that these soils have on grape growing is acknowledged in the many wine articles submitted in the original petition. The article *Touring the Washington Wine Country*, by the Washington Wine Commission states, "This site offers * * * light soils that encourage grapevines to seek nutrients via deep roots." The petitioner, through his accumulated evidence, has established that the soil in the Red Mountain area is a significant part of what distinguishes Red Mountain from the surrounding areas.

Evidence Submitted With Petition

What Name Evidence Was Provided?

The petitioner submitted as evidence of name recognition several newspaper and magazine articles referencing Red Mountain as a wine producing area. These publications include: *The Seattle Post-Intelligencer*; *the Globe and Mail*, (Toronto); *Wine Access* (Canada); *Decanter* (UK); and *Wine* (UK). Other sources cited by the petitioner as referring to the wines of Red Mountain include: *Decanter Magazine Guide to Oregon, Washington State and Idaho* (Third Edition, 1996); *Touring the Washington Wine Country*, published by the Washington Wine Commission (1997 edition); and *Connoisseur's Guide to California* (July 1997 edition).

Several of these references describe Red Mountain as having distinctive qualities that are conducive to grape growing. Examples include:

Decanter Magazine Guide to Oregon, Washington State and Idaho (Third Edition, 1996): "The Red Mountain region, at the confluence of the Columbia, Snake and Yakima rivers, is a relatively warm area, and vineyards on upper slopes, again with south facing

aspects, are yielding superior wine. . . . Evidence is mounting to indicate that Red Mountain may be one of the genuine special vineyard sites.”

Wine Access, November 1998: “Although most of Eastern Washington’s vineyards bask in a hot, dry climate, Klipsun [an area vineyard] sits between a gap in the Rattlesnake and Red Mountains in the lower Yakima Valley that is regularly blessed with slightly cooler air that filters through the gap from Canada. This, along with its stingy soils best described as sandy, silty loam, and silty loam over gravel, helps to explain the elegant, concentrated nature of the Klipsun fruit.”

Touring the Washington Wine Country, by the Washington Wine Commission (1997 edition): “Many of the award-winning Cabernet Sauvignons that emerged from Washington’s first quarter-century of fine winemaking used a percentage of their fruit from the vineyards sloping down from Red Mountain toward the Yakima River just above Benton City near Richland. This site offers good air drainage and light soils that encourage grapevines to seek nutrients via deep roots. Irrigated vineyards allow the grape growers to control vine vigor and to ease the vines into dormancy before winter.”

What Boundary Evidence Was Provided?

The petitioner submitted as boundary evidence one U.S.G.S. map titled “Benton City, Washington” (1974) on which Red Mountain is prominently labeled. The proposed viticultural area starts on the ridgeline of Red Mountain and then sweeps down in a triangle toward the southwest, encompassing the southern slope of the mountain down to an elevation of 560 feet. There are currently 13 vineyards on Red Mountain, all on the southwestern slope and within the boundaries. The oldest of these vineyards was planted in 1975. According to the petitioner, these boundaries contain a grape growing area with a distinctive character based on soil, topography and climate.

What Evidence Relating to Geographical Features Has Been Provided?

The geographical and climatic features of Red Mountain distinguish it from the surrounding Yakima Valley viticultural area.

Soil: The petitioner stated that Red Mountain’s soil associations (landscapes with distinctive proportional patterns of soils) are unique in the Yakima Valley viticultural area. In support of this statement, the petitioner submitted soil survey maps issued by the U.S. Department of Agriculture’s Soil Conservation Service for the Yakima County and Benton County areas. Using these maps, the petitioner compared the soil associations for Red Mountain and other grape growing areas in the Yakima Valley viticultural area.

According to the Benton County area soil survey maps, the dominant soil association of Red Mountain is Warden-Shano. A more specific analysis reveals that the following soils are present within the Warden-Shano association: Warden silt loam, Hezel loamy fine sand, Scooteny silt loam, and Kiona very stony silt loam. The petitioner compared this data with soil data for Glead, Buena, and Sunnyside, other grape growing areas in Washington State within the Yakima Valley viticultural area. The soil associations of these areas are composed of Weirman-Ashue, Harwood-Gorst-Selah, Ritzville-Starbuck, Cowiche-Roza, Warden Esquatzel, and Quincy-Hezel. Thus, argued the petitioner, Red

Mountain has a soil association that sets it apart from the rest of the Yakima Valley viticultural area.

Climate: According to the petitioner, temperatures on Red Mountain tend to be hotter during the growing season than those in other areas of the Yakima Valley viticultural area.

To support this contention, the petitioner submitted temperature data gathered from weather stations in the Washington Public Agriculture Weather System administered by Washington State University. He compared data from the weather stations of Benton City, Sunnyside, Buena, and Glead, all located in the Yakima Valley viticultural area. The Benton City station is located on Red Mountain within the proposed viticultural area. A comparison of average annual air temperatures for the years 1995 through 1999 shows that the Benton City station consistently had the warmest temperatures. The average temperature difference between Benton City and Glead, the coolest site, ranged from 3.92 to 5.61 degrees.

The petitioner stated that the difference of only a few degrees over the course of a growing season can produce dramatic results on the enological characteristics of wine. He further stated that Red Mountain is typically the first grape growing area in Washington State to harvest grapes because of its warmer temperatures. According to the petitioner, the warmer temperatures also help to produce fully mature, ripe grapes with exceptional balance that differ substantially in quality from those of other growing areas in the state.

Topography: Existing vineyards in the viticultural area lie on the southwest-facing slope of Red Mountain. Elevation ranges of these vineyards are from approximately 600 to 1,000 feet. The petitioner noted that there is an immense gap separating the northwest end of Red Mountain from the southeast extremity of nearby Rattlesnake Ridge. He stated that cooler, continental air masses flow south from Canada through this gap. In addition, the Yakima River flows north around Red Mountain before joining the Columbia River, creating an air drainage system. The petitioner further stated that these characteristics, along with the predominantly southwest facing slope of Red Mountain, serve to flush the warm daytime air off the face of Red Mountain and replace it with a cooler air mass. According to the petitioner, the resulting growing environment yields grapes that are both high in sugar (due to warmer daytime temperatures) and high in acid (due to lower evening temperatures).

Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Final Rule?

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 rule because no requirement to collect information is imposed.

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

These regulations will not have a significant economic impact on a substantial number of small entities. ATF does not wish to give the impression that by approving the Red

Mountain viticultural area it is endorsing wine produced in the area. ATF is approving the area as being viticulturally distinct from surrounding areas, not better than other areas. The establishment of the Red Mountain viticultural area merely allows its wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, 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 that area.

Accordingly, a regulatory flexibility analysis is not required. The final rule is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

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 by Executive Order 12866. Therefore, a regulatory assessment is not required.

Drafting Information

The principal author of this document is Jennifer Berry, 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

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding Sec. 9.167 to read as follows:

§ 9.167 Red Mountain.

(a) Name. The name of the viticultural area described in this section is “Red Mountain.”

(b) Approved Maps. The appropriate map for determining the boundaries of the Red Mountain viticultural area is one U.S.G.S. map titled “Benton City, Washington” 7.5 minute series (topographic), (1974).

(c) Boundaries. The Red Mountain viticultural area is located within Benton County, Washington, entirely within the existing Yakima Valley viticultural area. The boundaries are as follows:

(1) The northwest boundary beginning on this map at the intersection of the 560-foot elevation level and the aqueduct found northwest of the center of section 32.

(2) Then following the aqueduct east to its endpoint at an elevation of approximately 650-feet, again in section 32.

(3) From this point in a straight line southeast to the 1173-foot peak, located southeast of the center of section 32.

(4) From this peak southeast in a straight line across the lower southwest corner of section 33 to the 1253-foot peak located due north of the center of section 4.

(5) Then in a straight line southeast to the 1410-foot peak located in the southwest corner of section 3.

(6) From this peak in a straight line southeast to the border of sections 10 and 11 where the power line crosses these two sections. This intersection is northeast of the center of section 10 and northwest of the center of section 11.

(7) From this point in a straight line south following the border of sections 10 and 11 to the corner of sections 10, 11, 15, and 14. This point has an elevation of 684 feet.

(8) From this point southwest in a diagonal to the 700-foot elevation line and then following this 700-foot elevation through Section 15 and into section 16.

(9) Then following the 700-foot elevation line southwest $\frac{1}{4}$ mile in a southwest diagonal until it meets the creek bed.

(10) Following the creek bed southwest through section 16, across the extreme southeast corner of section 17 and into the northeast corner of section 20 to a point where the creek bed meets the 560-foot elevation point.

(11) From this 560-foot elevation point, running north along this elevation line through section 17, through section 8, through section 5 and through section 32 until meeting the beginning point at the aqueduct in section 32.

Signed: March 6, 2001

Bradley A. Buckles,
Director

Approved: March 15, 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

River Junction Viticultural Area

T.D. ATF-452

27 CFR Part 9

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

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is establishing a viticultural area located in southern San Joaquin County, California, to be known as “River Junction.” This viticultural area is the result of a petition filed by Mr. Ronald W. McManis. 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 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: July 9, 2001.

FOR FURTHER INFORMATION CONTACT: Tim DeVaney, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226; Telephone (202) 927-8196.

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 definite American viticultural areas (AVAs). 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, Code of Federal Regulations, 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.

Petition

ATF has received a petition from Mr. Ronald W. McManis, proposing to establish a new viticultural area in southern San Joaquin County, California, to be known as “River Junction.” The viticultural area is located at the western edge of San Joaquin Valley (also known as the Central Valley) and the southernmost edge of the Sacramento-San Joaquin River Delta. It contains approximately 1,300 contiguous acres, of which 740 are currently planted to vineyards. Present agricultural use of the area is primarily 700 acres of Chardonnay grapes. An additional 40 acres are planted to Cabernet Sauvignon grapes.

Notice of Proposed Rulemaking

In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 901, in the Federal Register on August 10, 2000 [65 FR 48653], proposing the establishment of the River Junction viticultural area. The notice requested comments from interested persons by October 10, 2000.

Evidence That the Name River Junction Is Locally or Nationally Known

The origin of the name, “River Junction,” refers to the junction of the Stanislaus River with the San Joaquin River. Mr. McManis states, “The name is in prominent use within the AVA, undoubtedly because of the significant prehistoric, historic, and ongoing influence of the rivers’ confluence on the immediate area.” The petitioner owns a vineyard in the AVA. The property, purchased in the early 1990’s, was previously known as “River Junction Vineyards.” A vineyard block map of his ranch shows the historical ownership of the vineyards by the designation “R” for “River Junction Vineyards.” These vineyards are located within the AVA.

The name “River Junction” is also used for River Junction Reclamation District No. 2064, a State of California Special District dating from at least 1925. River Junction Reclamation District includes Bret Harte Gardens subdivision, filed October 11, 1922. Since this subdivision assumes reclamation within the District, it seems likely that “River Junction,” as a District name, dates at least to 1922. The name is also used for River Junction Farms subdivision no. 2 within the River Junction Reclamation District.

Evidence of Boundaries

The viticultural area is bounded on the north by an old river terrace shelf delineated by Division Road; on the northwest by a drainage boundary enhanced and delineated by Airport Way; on the west and south by the San Joaquin River; and on the south and east by the Stanislaus River.

Following the Federal Swamp Land Act of 1850, reclamation of wetlands was begun. A portion of the River Junction AVA was designated as a State Reclamation District, River Junction Reclamation District No. 2064. Ronald McManus indicated that this portion of the AVA “. . . occupies the southern one-third of the California State Reclamation District No. 2064 and is the same as River Junction Farms Subdivision No. 2, except that it does not include 195 acres at the northeast corner of that subdivision.”

As indicated, the petitioner owns a vineyard in the viticultural area. Most of the property, purchased in the early 1990's, was previously known as River Junction Vineyards and is located within the northwest and southwest boundaries of the AVA, west of Two Rivers Road.

Geographical Features

Topography

The following topographical evidence shows that the area is distinct from surrounding areas:

(a) South, east and west boundaries. The River Junction viticultural area is bounded on the west by relatively steep slopes and the San Joaquin River, and is bounded on the south and east by gentle, nearly flat topography and the Stanislaus River. The area is locally unique in terms of topography: its gentle, persistent southwest slope and higher boundaries form a shallow, slightly tilted bowl about 18 to 25 feet in elevation at the center. Original natural boundaries to the west, south and east have been exaggerated by engineered, permanent levees that range from about 35 to 42 feet in elevation. Geographical analyses, provided by the petitioner, show a transect through the River Junction AVA and illustrate the elevation differences that distinguish it.

(b) Northern boundary. The northern boundary of the area is an abrupt, natural elevation change at about the 29 foot contour, delineated by Division Road. Physical evidence indicates that Division Road was placed on the upper side of a pre-existing natural river terrace boundary. The topographic change marked by the road exactly follows geologic and soil type boundaries extending from the east to the center of section 7 on the Ripon, CA quadrangle map T3S/R7E and westward to Airport Way. The natural extension of “Red Bridge Slough” to the northwest is further evidence that this boundary is a natural river terrace.

(c) Northwest boundary. The northwest boundary of the River Junction AVA is delineated by Airport Way, a subtle natural high that is exaggerated by the raised roadbed. Elevation ranges from about 29 to 35 feet. Available geologic and historic evidence strongly supports the conclusion that, like Division Road, Airport Way follows a natural topographic high. The U.S.G.S. maps submitted by the petitioner show two

separate sloughs draining from the Airport Way/Division Road intersection. An unnamed slough on the U.S.G.S. Ripon, CA quadrangle map drains southeast through the River Junction AVA, while the other slough, called “Red Bridge Slough” on the U.S.G.S. Vernalis, CA quadrangle map, flows in the opposite direction. A 1925 Reclamation District Map (“southern part”) provided by the petitioner also shows the two sloughs. These two sloughs coincide with occurrences of Merritt soils, which fan out to the northwest and southeast of the Airport Way/Division Road intersection. This provides further evidence that the intersection of Airport Way and Division Road has historically sat on naturally higher topography from which the soils accumulated downhill in two directions.

Soil

The following is evidence regarding the soil composition of the River Junction AVA:

(a) Formation and distribution of local soils. The River Junction AVA contains soils that are generally grouped as alluvial, and which formed on the geologic parent material of recent river channel deposits that are exposed in, and partly define, the area. Soils that formed on the stream channel deposits and derived from these deposits, are similar to one another in nature, and are characteristic of the parent sedimentary deposits. These soils are identified as “recent alluvial floodplains soils” and “delta and floodplains soils” in the U.S. Department of Agriculture soils reports for San Joaquin and Stanislaus counties.

Where the Stanislaus River joins the San Joaquin River, bounding topography is steeper to the west and flatter to the east, thus restricting the westward limits of soils. West of the San Joaquin River, northeast facing slopes limit alluvial soils to an area only about 1/2 mile or less in width. These soils, primarily Merritt-Columbia-Dello series and Dospalos-Bolfar complex, are bounded on the west by basin soils of the Willows-Pescadero series and terrace soils of the Capay series. Conversely, east of the San Joaquin River, flatter topography has allowed alluvial soils to accumulate to a width of 1 to 1 1/2 miles.

South of the Stanislaus River there are mostly Columbia-Temple series soils, bounded by basin soils of the Waukena-Fresno association, and alluvial fan soils of the Modesto-Chualar group that extend eastward.

North of the Stanislaus River, elevation is slightly higher than to the south, and topography is nearly flat but includes subtle northwest-facing and more strongly expressed southwest-facing slopes. Here the alluvial soils reach 1 1/2 miles in width and are composed of Merritt-Grangeville-Columbia series with lesser amounts of Dello and Egbert soils. They are bounded to the east by terrace soil groups, primarily of the Delhi-Veritas-Tinnin series.

(b) Unique soil composition of area. The River Junction viticultural area is a mix of soils that differs from the surrounding areas. Among the total soils, nearly one-half are sandy types, and about one-fourth of the total is fine sandy loam of the Grangeville series. Soil types include about 25 percent Grangeville fine sandy loam; about 50 percent Merritt silty clay loam; nearly 25 percent Columbia fine sandy loams; and less than 1 percent Veritas silty clay loam. None of the surrounding areas has nearly as high a ratio between sandy loam to clay loam soils. Grangeville sandy loam is unusual in this part of

the southern delta. The single other local occurrence of Grangeville sandy loam soil is west of the San Joaquin River, 1½ miles northwest, and is less than 11 acres in area.

Grangeville and Columbia series are formed in alluviums derived from granitic rock sources and the Merritt series is formed in alluviums from mixed rock sources. The Grangeville, Merritt, and Columbia series of soils are characterized as “prime farmland.” These soils are all very deep, less well drained, and have moderate to high water capacity. Permeability ranges from moderately slow in the Merritt series to rapid in the Columbia and Grangeville series. They occupy nearly flat areas at low elevation and are occasionally flooded. They are exceedingly fertile soils that are capable of supporting wine grapes, almonds, tomatoes, sugar beets, wheat and other crops. Grapes have been grown on Columbia soils, but apparently, in San Joaquin County at least, have not been previously grown on bottomlands with Grangeville and Merritt.

Soil samples collected on-site at the viticultural area during October 1997 include one sample from each of the dominant units. Brief low-power microscopic analysis from each of these samples indicated similar texture and composition. All samples contained abundant angular quartz grains and mica flakes, indicating granitic origin. These soils are mineralogically young and should be expected to be very high in available minerals.

(c) Comparisons with surrounding areas. The River Junction viticultural area is clearly distinct from all potentially comparable adjacent local tracts, including the Red Bridge Slough, Walthall Slough, and Northeast areas.

As would be expected of deposits formed along rivers, downstream alluvial soils have a wider distribution than does their parent alluvial substrate, due to stream transport, while upstream the derived soils are less widely distributed than the underlying stream channel deposits.

In the River Junction viticultural area, derived alluvial soils strictly overlap but do not extend beyond their parent recent river deposits. The strict relationship between the channel deposits and their derived soils in the area results in a strikingly distinct northern boundary.

The location of these soil changes corresponds to the location of a strongly expressed terrace (distinct change in elevation) which angles northwest from the Stanislaus River near its mouth. Its upper side is nearly exactly followed by Division Road. This terrace probably marks the highest flood stage in historically recent times and suggests that soils in the area are probably derived from Stanislaus River alluvium. This would explain the distinctively high granitic content of these soils as compared with the surrounding area.

In the Red Bridge Slough area (north of the AVA’s boundary following Airport Way) overlap of alluvial soils with parent channel deposits is less exact and the soils are restricted to the west of the Slough. This tract has a slight northwest slope and, based on field observation, is wetter than the River Junction viticultural area. It has no strongly expressed northern or eastern boundaries, and thus would have less temperature extremes than the AVA due to the absence of topographic enclosure.

The Red Bridge Slough area also has soils that are different from the proposed River Junction AVA. It contains about 35 percent Columbia loam. At its center it includes 10 percent Egbert silty clay loam. No Grangeville sands are present. As indicated above, the tract is part of River Junction Reclamation District No. 2064, which was recorded as River Junction Farms subdivision no. 3 in 1925. Durham Ferry State Recreation Area

occupies about 20 percent of the tract, and the remaining part is essentially flat at 20-25 feet elevation.

Southeast of Walthall Slough, located north of the Red Bridge Slough area, the relationship between channel deposits and derived soils is obscure. Here the soils occupy a larger expanse than do the underlying stream deposits. They include nearly 40 percent Columbia soils and about 20 percent Dello clay loam. No Grangeville sands are present. Topographically, this area is essentially flat to slightly northwest sloping. In terms of soils, and the microclimate that would be inferred from the flat and open topography, it is completely different from the AVA.

To the northeast, recent river alluvium still underlies the soils but soils in this area include about 20 percent Veritas and Manteca series. No Grangeville sands are present. Otherwise, the Merritt and Columbia soils percentages are comparable to the River Junction AVA. However, this area is higher and flatter, averaging about 30-35 feet elevation, and has no distinct topographic boundaries. Therefore, it undoubtedly has less temperature extremes than the AVA. This area comprises about 195 acres of the original River Junction Farms subdivision no. 2.

Climate

The River Junction AVA is shown on a Sacramento-San Joaquin Delta map (“Base Map Source—Department Of Water Resources”). The AVA appears within the boundaries of the aforementioned delta, at the southeasternmost tip. The southernmost edge of the Sacramento-San Joaquin River Delta is more modified by inland weather patterns than other parts of the Delta. This part of the Delta experiences more extreme high and low temperatures, although still receiving maritime influence. It is subject to little rainfall (10 to 11 inches per year) and, at its southernmost part, lies within the rain shadow of the maritime influenced land to the west. This is the driest part of the Delta and can be considered as arid to semiarid with maritime influence.

The viticultural area is distinctively cooler than the immediate surrounding area (Modesto, Stockton, Tracy Carbona, Tracy Pumping Plant, and Rivercrest Vineyards). Temperature data from 1995 and 1996 were recorded by a weather station located near the center of the River Junction AVA, at Rivercrest Vineyards. The monthly-averaged data show that minimum temperatures are consistently slightly cooler than elsewhere in the region, especially in summer. Average high temperatures are similar to Antioch and Lodi, which are significantly closer to the Suisun and San Francisco Bays and would be expected to experience more cooling from the maritime influence. Average low temperatures are generally the coolest among Tracy Carbona and Tracy Pumping Plant. Significantly, minimum August temperatures are 2 to 5 degrees cooler than Tracy, Stockton, and Modesto.

Grapes grown here are also subject to seasonally later frosts as pointed out by an unpublished agricultural analysis by Cook and Lider dated 1972.

Comments on Notice of Proposed Rulemaking

ATF did not receive any comments in response to Notice No. 901. Having analyzed and evaluated the evidence contained in the petition, ATF is adopting the River Junction viticultural area as proposed.

Boundary

The boundaries of the River Junction viticultural area may be found on the following two 1:24,000 Scale U.S.G.S. topographical maps. They are titled:

- (1) Ripon, CA 1969, photorevised 1980;
- (2) Vernalis, CA 1969, photorevised 1980;

The boundaries are described in Sec. 9.164.

Executive Order 12866

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

Regulatory Flexibility Act

It is hereby certified that this proposed 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.

Paperwork Reduction Act

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

Drafting Information

The principal author of this document is Tim DeVanney, 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. Subpart C is amended by adding Sec. 9.164 as follows:

Subpart C—Approved American Viticultural Areas

§ 9.164 River Junction.

(a) Name. The name of the viticultural area described in this section is “River Junction.”

(b) Approved maps. The appropriate maps for determining the boundaries of the River Junction viticultural area are the following two 1:24,000 Scale U.S.G.S. topographical maps. They are titled:

- (1) Ripon, CA 1969, photorevised 1980;
- (2) Vernalis, CA 1969, photorevised 1980;

(c) Boundaries. The River Junction AVA is located in southern San Joaquin County, California. The boundaries are as follows:

- (1) Beginning on the Vernalis, CA quadrangle map at the intersection of the secondary highway Airport Way and the San Joaquin River levee, near Benchmark 35 in T3S/R6E;
- (2) Then in a southeasterly direction, follow the levee along the San Joaquin River onto the Ripon, CA quadrangle map;
- (3) Then in a northerly direction around Sturgeon Bend in section 18 T3S/R7E;
- (4) Then continuing in a generally southeasterly, then northeasterly direction along the levee adjoining the Stanislaus River through sections 19, 20 and 17 to the point where the levee intersects sections 17 and 8;
- (5) Then continuing in a northerly direction along the levee in section 8 for approximately 1,000 feet;
- (6) Then in a straight line in a northwesterly direction for approximately 100 feet to the intersection with Division Road;
- (7) Then in a southwesterly, then northwesterly direction along Division Road through sections 8, 17, 18 and 7 to the intersection with the secondary highway Airport Way;
- (8) Then in a southwesterly direction along Airport Way onto the Vernalis quadrangle map to the starting point at the intersection of Airport Way and the San Joaquin River levee T3S/R6E.

Dated: March 8, 2001

Bradley A. Buckles,
Director

Approved: April 4, 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

Long Island Viticultural Area

T.D. ATF-453

27 CFR Part 9

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

ACTION: Treasury decision, final rule.

SUMMARY: This final rule establishes a viticultural area to be known as “Long Island,” located in Nassau and Suffolk counties, New York. This action is the result of a petition filed by Richard Olsen-Harbich on behalf of Raphael Winery, the Petrocelli Family, and Karen Meredith of Broadfields Vineyards.

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: July 16, 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 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.

ATF does not wish to give the impression by approving the Long Island viticultural area that it is approving or endorsing the quality of wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of wines from Long Island.

What is the Definition of an American Viticultural Area?

27 CFR 4.25a(e)(1), 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.

Long Island Petition

ATF received a petition from Richard Olsen-Harbich on behalf of Raphael Winery, the Petrocelli Family, and Karen Meredith of Broadfields Vineyards, proposing to establish a viticultural area in Nassau and Suffolk counties, New York, to be known as “Long Island.” This viticultural area encompasses the two existing appellations, “The Hamptons, Long Island” and “North Fork of Long Island,” as described in 27 CFR 9.101 and 9.113, as well as the remaining areas of Nassau and Suffolk counties, New York. The

Long Island viticultural area does not include Kings County (Brooklyn) or Queens County, New York.

The Long Island viticultural area encompasses approximately 1,170 square miles or 749,146 acres. Over 2,500 acres of vineyards are currently planted in the viticultural area and the area presently boasts thirty-eight vineyard and/or winery businesses.

Notice of Proposed Rulemaking

In response to the petition, ATF published a notice of proposed rulemaking, Notice No. 905, in the Federal Register on November 6, 2000, (65 FR 66518), proposing the establishment of the Long Island viticultural area. The notice requested comments from interested persons by January 5, 2001.

Comments on Notice of Proposed Rulemaking

Seven comments were received as a result of Notice No. 905, including a comment from United States Senator Charles E. Schumer, and a comment from several Members of the Assembly from the State of New York. All of the comments fully supported the establishment of the Long Island viticultural area. Senator Schumer emphasizes his support by stating “no other region in the Eastern United States has the quality of soil, length of growing season, moderate winter temperatures, and necessary amount of natural precipitation as Long Island.”

What Name Evidence Has Been Provided?

The petitioner offered the following as evidence that the name “Long Island” refers to the area. The name “Long Island” has been in continuous use from 1616 to the present to represent the island on which the viticultural area is located. However, the Long Island Travel Guide (1997) states that the name “Long Island” is commonly known to mean Nassau and Suffolk counties exclusively. Also, the 1999 Long Island Almanac (33rd ed.) covers Nassau and Suffolk counties only.

The Bell Atlantic White Pages lists approximately 1,150 business telephone listings in Suffolk and Nassau counties using the term “Long Island.” By comparison, the White Pages in Brooklyn and Queens reflect almost no usage of the term “Long Island” to describe businesses located there. In addition, the petitioner submitted, as evidence, several maps, newspaper, and magazine articles which refer to the area as “Long Island.”

What Boundary Evidence Has Been Provided?

The petitioner has submitted, as boundary evidence, the following maps on which the name “Long Island” prominently appears:

1. U.S.G.S. Map (New York, N.Y.; N.J.; Conn. 1960 (revised 1979));
2. U.S.G.S. Map (Hartford, Conn.; N.Y.; N.J.; Mass. 1962 (revised 1975)); and
3. U.S.G.S. Map (Providence, R.I.; Mass.; Conn.; N.Y. 1947 (revised 1969)).

The Long Island viticultural area is located on the eastern part of Long Island, New York. The area is surrounded by the Queens County line on the west, Long Island Sound to the north, the Atlantic Ocean to the south and Block Island Sound and Fishers Island Sound to the east.

Long Island, New York, has four counties: Kings (commonly known as Brooklyn), Queens, Nassau, and Suffolk. The petitioner contends that the appropriate western boundary for the viticultural area is the Queens County line because Kings and Queens counties are not suitable for viticultural purposes. Commercial farms no longer exist in Kings or Queens counties; these counties are densely populated urban areas. In addition, the name “Long Island” is used in common parlance to refer to the Nassau and Suffolk counties exclusively.

What Evidence Relating to Geographical Features Has Been Provided?

Soil: The record demonstrates that the soils of the Long Island viticultural area are glacial in origin. In general, the soils of the viticultural area contain a greater percentage of sand and gravel and a lower percentage of silt, loam and clay than in the soil associations and series found in bordering areas. Soils in the Long Island viticultural area lack any real percentage of natural limestone when compared to surrounding regions. The soils of the viticultural area are more acidic and make an agricultural liming program indispensable to any vineyard operation. Because of this factor, the soils of the viticultural area are also slightly lower in natural fertility and water-holding capacity than neighboring areas. According to the petitioner, this difference in soil types leads to a very unique and distinct “terroir” for the Long Island viticultural area—sandy loams will warm up faster, drain better, and allow deeper root penetration than soils in bordering areas, which contain greater amounts of silt, clay and rock.

The soils of the Long Island viticultural area are fairly uniform in that they are predominately glacial till and glacial outwash in nature, are very low in organic matter, and contain few, if any, large mineral deposits or exposed rock formations. Many of the soil series including the Wallington, Sudbury, Scio, Montauk, Plymouth and Riverhead Soil Series are common throughout the entire viticultural area.

One of the most distinctive features of the Long Island viticultural area is the vast quantity of sandy loam soil deposited during the Pleistocene Epoch of the Quarternary Period. This soil was deposited during the last four major glacial stages of this Epoch. From oldest to youngest they are: Nebraskan, Kansan, Illioian, and Wisconsin. Because of this, the area between the surface soil and bedrock areas is several hundred feet.

By contrast, the nearest surface bedrock begins near the Queens County line. Some areas of Queens show exposed bedrock formations while the bedrock layer in the Long Island viticultural area can be as much as 500 feet below the surface. For this reason, the soils found in Queens County are much shallower than the typical soils found in the viticultural area and are not suitable for growing grapes. In addition, Queens County, which is considered part of New York City, is completely urbanized and contains essentially no agricultural land. Most of the soil series now identified in Queens are known as anthropogenic soils. These soils are described as having properties that are dominantly derived from human activities. Out of the 30 soil types found in the region of Queens County, only three are also found in the Long Island viticultural area.

Topography and Terrain: Evidence submitted by the petitioner shows that the Long Island viticultural area is unique from its bordering regions in that it lacks any real undulations, rock outcrops or muckland areas. By contrast, the Highland Basin, located immediately to the west-northwest of the Long Island viticultural area and encompassing the areas of northern New Jersey, the Hudson Highlands region of southern New York (including Manhattan, Westchester, the Bronx, and parts of Brooklyn and Staten Island), and upland parts of Connecticut, is a rugged, hilly-to-mountainous terrain. Similarly, the Newark and Atlantic Basins, located directly to the northeast and southwest of the viticultural area, contain characteristic sedimentary sandstones and mudrocks that usually bear a red or brownish appearance from an abundance of iron oxide minerals (hematite and limonite). None of these geologic formations exist in the Long Island viticultural area.

Climate: There is evidence in the record showing that the moderating influence of the Long Island viticultural area's surrounding water is evident in the temperature data. In terms of average temperatures, the viticultural area shows the highest average annual winter temperature compared to the surrounding areas. The Long Island viticultural area's average low temperature over thirty years is 43.5 degrees Fahrenheit (43.5 deg.F), 2.5 deg.F warmer than the area of Westchester County and downstate New York, and 2.2 deg.F warmer annually than the average from New Jersey. The Long Island viticultural area is also over 4 deg.F warmer on average than Connecticut.

The Long Island viticultural area also has the least extreme winter low temperatures than its surrounding areas with the lowest average being -5.67 deg.F. New Jersey was 1.63 deg.F colder at -7.3 deg.F. Westchester/Downstate New York and Connecticut were seen to have winter low temperatures considerably colder than the Long Island viticultural area. Connecticut can experience temperatures as low as -13.5 deg.F which is 7.83 deg.F colder than the Long Island viticultural area. Westchester/Downstate New York proved to be the coldest with low temperatures reaching -15.3 deg.F in some years which is 9.63 deg.F colder than the Long Island viticultural area.

Based on the standard University of California at Davis (UCD) temperature summation definition of climatic regions or zones, the Long Island viticultural area would appear to fall into high Region II (less than 3,000 degree days). Connecticut on the average is a borderline Region II with some years having Region I (less than 2,500 degree days) conditions. New Jersey is solidly classified as a Region III (less than 3,500 degree days), with some locations approaching Region IV (less than 4000 degree days) status in warmer years. The Long Island viticultural area historically has an average of 166 more degree-days than Westchester/Downstate NY and as much as 324 more degree-days than Connecticut.

On average, the Long Island viticultural area experiences 204 frost-free days during the growing season. This is 31 days longer than New Jersey, 37 days longer than Westchester/Downstate NY and as much as 50 days longer than the Connecticut average. The Long Island viticultural area can therefore have as much as four to seven weeks more growing season than any of the surrounding land masses.

On an average annual basis, the Long Island viticultural area has the lowest levels of precipitation of all the surrounding areas with 42 inches annually. The annual difference is 3.4 inches less than Westchester/Downstate NY, 3.8 inches less than New Jersey and

4.1 inches less than Connecticut. The reason for this difference is attributed to the moderating influence of Long Island Sound waters.

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 Proposed 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 Proposed 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, 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.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding Sec. 9.170 to read as follows:

§ 9.170 Long Island.

(a) Name. The name of the viticultural area described in this section is “Long Island.”

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

(1) “New York, N.Y.; N.J.; Conn.,” 1960 (revised 1979);

(2) “Hartford, Conn.; N.Y.; N.J.; Mass.,” 1962 (revised 1975);

and

(3) “Providence, R.I.; Mass.; Conn.; N.Y.,” 1947 (revised 1969).

(c) Boundaries. The Long Island viticultural area includes approximately 1,170 square miles or 749,146 acres and is made up of the counties of Nassau and Suffolk, New York, including all off shore islands in those counties.

Bradley A. Buckles,
Director

Approved: April 19, 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

Establishment of Santa Rita Hills Viticultural Area

T.D. ATF-454

27 CFR Part 9

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

ACTION: Treasury decision, final rule.

SUMMARY: This final rule establishes a viticultural area located in Santa Barbara County, California, to be known as “Santa Rita Hills.” The proposed area occupies more than 48 square miles. This action is being taken as a result of a petition from viticulturists and vintners of the proposed area under the direction of J. Richard Sanford (Sanford Winery), Bryan Babcock (Babcock Vineyards and Winery), and Wesley D. Hagen (Vineyard Manager of Clos Pepe Vineyards).

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 are grown and enable consumers to better identify the wines they purchase.

EFFECTIVE DATE: July 30, 2001.

FOR FURTHER INFORMATION CONTACT: Joyce A. Drake, ATF Specialist, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20091-0221 (202)-927-8210.

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 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 (AVA) as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in Subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an AVA. 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 (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF received a petition under the direction of J. Richard Sanford (Sanford Winery) which was written by Wesley D. Hagen (Vineyard Manager of Clos Pepe Vineyards), on behalf of viticulturists and vintners working in Santa Barbara County, California. The petition, which was signed by 22 people, 14 of whom are local wine grape growers,

proposed to establish a viticultural area surrounded by but separate from the Santa Ynez Valley AVA of California to be known as “Santa Rita Hills.” The boundary of the viticultural area encloses an estimated area slightly greater than forty-eight (48) square miles and contains approximately 500 acres of planted varietal winegrapes. Currently two (2) wineries and seventeen (17) vineyards exist within the Santa Rita Hills area. Two additional vineyards are being developed.

Comments

On September 11, 1998, ATF published a notice of proposed rulemaking, Notice 866, in the Federal Register, soliciting comments on the proposed viticultural area.

Analysis of Comments

ATF received a total of 35 comments concerning this petition. Eleven letters of support from various persons familiar with the proposed AVA were submitted with the petition. These letters of support included industry “experts,” vintners, consultants, local politicians (such as the Chair for the Santa Barbara County Board of Supervisors and the Mayor of the city of Lompoc), and viticulturists. Seven of the eleven comments were from persons who had also signed the petition. All 11 comments attested to the uniqueness of the area, its distinctive characteristics (geological, geographic, and climatic) and the local recognition of the area by the proposed name.

ATF received 24 comments that opposed the establishment of the Santa Rita Hills AVA. Most of these commenters were foreign/international importers and distributors. The opposition in each response revolved around the similarity of the proposed name to an already established “Santa Rita” brand of wine from Chile. All commenters opposing the establishment of the “Santa Rita Hills” Viticultural Area presented the following to support their contention that the petition to establish the “Santa Rita Hills” viticultural area should be denied:

There is already a well known and established “Santa Rita” vineyard and winery located in Chile, Vina Santa Rita, which was founded in 1880 and is known worldwide. Vina Santa Rita is a public company whose shares are traded on the Santiago Stock Exchange. This “Santa Rita” winery is the second largest winery in Chile, with consumer brand recognition in the Chilean wine industry. Large sums of money have been invested by both the “Santa Rita” winery in Chile and various importers and distributors worldwide to advertise and promote the “Santa Rita” (Chile) brand.

The opposing commenters contend that the establishment of a “Santa Rita Hills” viticultural area would confuse wine consumers who already associate the name “Santa Rita” with the Chilean wine. One commenter stated that, since the names are phonetically identical (sans the last word “Hills”), a product labeled of a “Santa Rita Hills” appellation may be seen as a variety of the Chilean “Santa Rita” as the Chilean “Santa Rita” is surrounded by hills and mountains. Also, since both names would refer to the same product (wine), the likelihood of consumer confusion would increase.

The opponents believe Chile’s “Santa Rita” owns a U.S. trademark and, therefore, the establishment of the “Santa Rita Hills” viticultural area would result in an infringement of the “Santa Rita” registered mark under the Lanham Act.

The opponents' view is that the establishment of a "Santa Rita Hills" AVA would violate the U.S. obligations under the Paris Convention and General Agreement on Tariffs and Trade (GATT), including Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Arguments Supporting the Establishment of the "Santa Rita Hills" Viticultural Area

The name "Santa Rita Hills" is locally and/or nationally known as referring to the specified area through maps, land records, reports, and various texts. These records show the Santa Rita area dating back to 1845 (35 years prior to the founding of the Santa Rita winery in Chile). The Californian Santa Rita title was accredited and confirmed in the U.S. Patent Book "A" on June 25, 1875.

The "Santa Rita" name is also used, and ATF approved, as a brand name on other wines not from Chile. According to documents found in ATF's label files, the "Santa Rita" name has been used on wines from Italy and the United States. This includes the use of the name "Santa Rita" on wines from Longoria, a winery in the Santa Rita Hills area whose proprietor, Richard Longoria, submitted a letter of support as well.

Wines from the "Santa Rita Hills" area have been recognized viticulturally and enologically as distinct by world-renowned writers and mentioned as such in wine literature. Supporting documentation shows that the area has a cool climate and soils more conducive to growing "Region One" cool-climate grape varieties whereas the surrounding Santa Ynez Valley AVA provides a warmer climate and soils for "Region Two" grape growing varieties. This distinction results in different wine varieties from each region.

The region of Santa Rita Hills is recognized viticulturally and enologically for producing world class cool-climate grapes such as Pinot Noir and Chardonnay, because of the unique climatic and geographical influences of the area.

Discussion

Evidence of Name

ATF is satisfied that the petitioner provided evidence that the name "Santa Rita Hills" is locally known as referring to the area specified in the petition. In the exhibits and maps furnished with the petition, there are numerous references to both "Santa Rita" and "Santa Rita Hills."

Evidence submitted with the petition relating to name includes:

(a) The U.S.G.S. Lompoc, Lompoc Hills, Los Alamos, and Santa Rosa Quadrangle maps used to show the boundaries of the proposed area use the name "Santa Rita Hills" to identify the area.

(b) The U.S.G.S. Water-Resources Investigations Report 970-4056 (Evaluation of Ground Water Flow and Solute Transport in the Lompoc Area, Santa Barbara County, California) discusses the "Santa Rita Upland Basin." The report indicates that "Santa Rita" is a recognized geological, geographical, and hydrological appellation in Santa Barbara County, California.

(c) An excerpt, “From the Missions to Prohibition,” in the publication *Aged in Oak: The Story of the Santa Barbara County Wine Industry* (1998), provided by the petitioner shows the vineyards and wineries in Santa Barbara County prior to 1900 include the name “Santa Rita.”

(d) The text provided by the petitioner from *History of Santa Barbara County* (1939) states, “Following the secularization of the Mission La Purisma, the rest of the valley was broken up into seven great ranchos granted to private owners. They were Santa Rosa, Santa Rita, Salsipuedes, La Purisima, Mission Vieja, Lompoc and a portion of the Jesus Maria.” (Italics added for emphasis.)

The Land Records of Santa Barbara County from the U.S.G.S. furnished by the petitioner show the Santa Rita area dating back to 1845. According to this information, Santa Rita was established as a recognized political and geographical region when a land grant for Santa Rita was made to Jose Ramon Malo from Spanish governor Pio Pico on April 12, 1845. The title was accredited to Jose Ramon Malo on June 25, 1875 by President Ulysses S. Grant as confirmed in the U.S. Patent Book A. (Pertinent pages are shown as exhibits to the petition.) The patent issued included 13,316 acres within the boundary of the Santa Rita Land Grant.

The names “Santa Rita” and “Santa Rita Hills” are both well documented in the petition and are both supported by written comments evidencing local recognition of the name as referring to the area specified in the petition. ATF finds that the name “Santa Rita Hills” is appropriate to identify the viticultural area based upon evidence submitted with the petition, including commenters’ support of the name “Santa Rita Hills” to describe the viticultural area and U.S.G.S maps identifying the area as “Santa Rita Hills”.

As to potential confusion between a product labeled with a “Santa Rita Hills” AVA and wines labeled with the name “Santa Rita,” a similar issue was raised when ATF was presented with a petition to establish a “Madera” AVA back in 1984. Some commenters to the petition, including the Portuguese Embassy, objected to the appellation of “Madera” due to possible confusion with the Portuguese island of Madeira which had produced world famous wine for over 500 years. The commenters were concerned that the use of the appellation “Madera” would cause possible confusion with Madeira wine (a class and type of dessert wine). ATF had previously recognized Madeira as a class and type of wine and as a semi-generic wine designation with geographical significance. When used as a class and type designation, Madeira had to be qualified with an appellation of origin if the wine was not from the island of Madeira.

Although ATF recognized the similarity in the names “Madera” and “Madeira,” ATF ruled in favor of the petitioner. All evidence showed that the proposed AVA was locally and nationally known as “Madera” thus meeting the requirement in 27 CFR 4.25a(e)(2)(I). In addition, ATF did not see any consumer confusion between “Madera” and “Madeira” wine when “Madera” was used as an appellation of origin on domestic wines.

In the present case, while ATF also recognizes the similarity between the name of the viticultural area “Santa Rita Hills” and the name “Santa Rita” in Chile, ATF is satisfied that the petition meets all of the requirements of 27 CFR 4.25a. Evidence submitted with the petition amply supports the local recognition of the name “Santa Rita Hills.” In addition, ATF does not foresee a likelihood of consumer confusion between the “Santa Rita Hills” AVA and other geographic areas of the same name. Numerous labels bearing

the name “Santa Rita” in one form or another have already been approved (from the United States, Chile, and Italy) dating from 1980, and ATF is aware of no reported consumer confusion as to the respective products’ origins.

As to objections to the use of the name “Santa Rita Hills” based upon potential violations of the Lanham Act and insofar as it implements U.S. obligations on trademarks under the Paris Convention, GATT, and TRIPS, these issues are matters of private dispute that do not restrict ATF’s authority to establish a viticultural area under the Federal Alcohol Administration Act (“FAA Act”), 27 U.S.C. 205(e).

Lanham Act

It is ATF’s position that the rights granted by registered trademarks under the Lanham Act do not foreclose the right to use the same or similar names on an alcohol beverage label under the FAA Act. In determining whether to establish a viticultural area of a particular name that is identical or similar to a trademarked name, ATF considers whether the criteria set forth in section 4.25a are met, whether the rulemaking record supports the use of the name for the designated area, and whether the use of such name would be deceptive or likely to create a misleading impression as to the product’s origin. The existence of a trademark is one factor in determining whether the use of a particular name is misleading to consumers.

In the case of the name “Santa Rita Hills,” ATF finds that Federal registration of the term “Santa Rita” under the Lanham Act does not limit ATF’s authority to establish a viticultural area known as “Santa Rita Hills.” First, as previously indicated, the petition satisfies the requirements of 27 CFR 4.25a. Second, no evidence in the rulemaking record or otherwise based on our experience in administering and enforcing the use of viticultural area designations, indicates that the name “Santa Rita Hills” would be misleading under the standard of the Federal Alcohol Administration Act, 27 U.S.C. 205(e)(1). As previously stated, numerous labels bearing the name “Santa Rita” in one form or another have already been approved (from the United States, Chile, and Italy) and there has been no evidence or other indication that establishes that consumers are confused as to the respective products’ origins.

The fact that imported products are required to state the words “Imported by” followed by the name and address of the party responsible for importation would, in the case of a product with a “Santa Rita Hills” appellation, signal to consumers that the product is domestically produced rather than Chilean in origin. The fact imported products are also required by Customs regulations to state the words “Product of _____” followed by the country of origin, further identifies the origin of imported products to consumers, as distinct from domestic products. Likewise, the fact that domestic products are required to indicate the name and address of the bottler or packer, minimizes the likelihood of confusion between a “Santa Rita Hills” wine and a product of Santa Rita in Chile or any other place.

Finally, under trademark law, the mere existence of a trademark does not necessarily preclude others from indicating the geographic origin of their products where the name is used in a descriptive sense rather than a trademark sense. In the case of a “Santa Rita Hills”

viticultural area, the name would be used on a label in a descriptive sense, to describe the product's appellation under the FAA Act.

ATF has determined that, under the "misleading" standard of the FAA Act, the use of the name "Santa Rita Hills" for this viticultural area is not likely to mislead the consumer. However, to the extent that a trademark holder believes that the depiction of a viticultural area name that contains all or part of a trademark results in an infringement, then that holder may pursue an infringement action to prevent and restrain the use of that viticultural area name by a winery on a wine label. The holder of the trademark would have to establish the likelihood of confusion based on the standard in the Lanham Act and the circumstances surrounding the presentation of the viticultural area name on the label. In cases where the trademark holder succeeds in establishing an infringement, then the ability to enjoin the continued use of that name by the winery ensures that the first in time right and exclusivity of rights of the trademark holder are protected. It must be noted that, in approving the name Santa Rita Hills for this viticultural area, ATF is not making any determination on whether the use of this name constitutes an infringement under the Lanham Act.

It should be emphasized that the Santa Rita winery in Chile will not necessarily be precluded from using the designation "Santa Rita" as a brand name on wine labels following issuance of this regulation. Pursuant to 27 CFR 4.39(i), a brand name of geographical significance may be used if it previously appeared on labels approved prior to July 7, 1986, and if the wine is also labeled with an appellation of origin (or some other statement which the Director finds to be sufficient to dispel the brand name's geographic connotation). Thus, the name "Santa Rita" may be used as a brand name where the wine meets the appellation requirements of the regulations and is labeled in a way that satisfies the regulatory requirements. As always, all labels are reviewed on a case-by-case basis to determine whether any particular label is likely to mislead consumers, including as to the origin of the product.

Finally, the comments raise questions about the application of the Paris Convention and the Agreement on Trade Related Aspects of Intellectual Property. Trademark rights mandated by these international obligations are implemented under the Lanham Act. Accordingly, any private rights in this area are available for pursuit as provided for by that Act.

In consideration of the above, ATF is adopting the name "Santa Rita Hills" in this final rule. ATF finds that the name "Santa Rita Hills" is appropriate to identify the viticultural area based upon all of the evidence in the petition and comments.

Evidence of Boundaries

The "Santa Rita Hills" AVA is located in Northern Santa Barbara County, California, east of Lompoc (U.S. Highway 1) and west of Buellton (U.S. Highway 101). Precise boundaries can be found on the five (5) U.S.G.S. Quadrangle maps (7.5 minute series originally dated 1959) submitted with the petition. On these maps, the Santa Rita Hills are the dominant central features of the area with its transverse (east/west) maritime throat stretching from Lompoc to a few miles west of the Buellton Flats. The Santa Rosa Hills to the south and the Purisima Hills to the north isolate the proposed area geographically and climatically.

Again, the U.S.G.S. Water-Resources Investigations Report 970-4056 describes the Santa Rita Upland Basin as being “in hydrologic continuity with the Lompoc Plain, Lompoc Upland and Buellton Upland basins, but separated from the Santa Ynez River alluvium by non-water-bearing rocks.” It goes on to state, “[a]n ongoing U.S.G.S. study treats the Santa Rita Valley as a separate unit * * *” and “* * * the eastern surface drainage divide between Santa Rita and Lompoc basins was used as a ground-water divide by the U.S.G.S.”

Climate

The climatic features of the viticultural area and thus the varieties grown therein, set it apart from the Santa Ynez Valley AVA, which borders the viticultural area. The Santa Ynez Valley area east of U.S. Highway 101 is characterized by higher temperatures than the “Santa Rita Hills” AVA to the west, which has a cool climate and is thus more conducive to growing “Region One” cool-climate winegrape varieties. By contrast, the eastern area of the Santa Ynez Valley, a “Region Two” growing area, provides a warmer climate and is well known for the production of varietal winegrapes such as Cabernet Sauvignon, Cabernet Franc, Merlot, Sauvignon Blanc, Mourvedre, and other varieties that require a significantly higher temperature (degree days) for adequate ripening. The “Santa Rita Hills” AVA, to the west of U.S. Highway 101, is better known for varieties such as Chardonnay and Pinot Noir, which are the predominant winegrapes there. In addition, ambient temperature and evapotranspiration rates during veraison and ripening are disparate for the two adjacent viticultural locales. The average post-veraison ripening temperature is 14.7 deg. F hotter within the Santa Ynez Valley AVA than in the “Santa Rita Hills” AVA to the west. Similarly, the heating degree day differential (with the base of 50 deg. F) between the two areas is 61 heating degree days, indicating an annual 92 heating degree days in the western Lompoc boundary and an annual 153 heating degree days in the eastern Cachuma Lake boundary. These temperature differences are the result of a unique set of topographical, geological and climatic influences, particularly coastal in origin.

The “Santa Rita Hills” AVA is situated within the clearly defined east/west transverse maritime throat, and thus is susceptible to the ocean’s cooling influence. This enables diurnal ocean breezes direct access to the coastal valleys between the Purisima Hills and the Santa Rosa Hills, which house the AVA. The coastal influence is not nearly as pronounced in the Santa Ynez Valley east of U.S. Highway 101 and the Buellton Flats. In addition, the proximity of the AVA to the Pacific Ocean fills the hills and valleys of the “Santa Rita Hills” AVA in the late night and early morning hours with coastal fog. This intensifies the cool-climate influence on varietal winegrape production between the geological boundaries of the Purisima Hills and the Santa Rosa Hills.

Soil

The soils of the Santa Rita Hills are broken down from an array of geological parent material, with the most common types being loams, sandy loams, silt loams, and clay loams. These soils are based on large percentages of dune sand, marine deposits, recent alluvium, river wash, and terrace deposits, which are shown on maps provided in the

exhibits of the petition. Soil samples collected from selected sites within the “Santa Rita Hills” AVA and the adjacent Santa Ynez Valley AVA show a distinct difference resulting from a high percentage of alluvial and marine sand within the Santa Rita Hills area. While the soil samples from the “Santa Rita Hills” AVA show higher percentages of sand, silt and sandy loams, the soil samples from the eastern Santa Ynez Valley show a higher percentage of gravelly and clay loams. Also, soil analysis test results from several vineyards in the proposed “Santa Rita Hills” AVA conducted by various labs in the area support the distinct soil data claims.

Topography

The topography of the “Santa Rita Hills” AVA is distinct and isolated from the rest of the Pacific Coast, the Central Coast, and the Santa Ynez Valley east of U.S. Highway 101 and the Buellton Flats. The AVA is demarcated by the east-west ranges of the Purisma Hills on the north and the Santa Rosa Hills on the south, framing Santa Rita Hills. When surveying the land within Santa Rita Hills to determine what locales would be the outer “edges,” the petitioner states the following was taken into account: viticultural viability (primarily hillside and alluvial basin plantings) and the coastal influence suitable for cool-climate still winegrape production. The actual topography of the “Santa Rita Hills” AVA is an oak-studded, hill-laden maritime throat that runs east to west, a few miles east of Lompoc to a few miles west of Buellton Flats. The coastal influence enters from the west, through Lompoc, and abruptly loses its influence at the eastern boundary, as demarcated on the enclosed U.S.G.S. maps. Elevations within the proposed boundary range from near sea-level to ridge-line 1800 feet above sea level.

ATF believes that the above statements relating to climate, soil, and topography are supported by the petition and distinguish the geographical features of the viticultural area from surrounding areas. Accordingly, ATF is establishing the “Santa Rita Hills” AVA as described below.

Boundary

The boundary of the “Santa Rita Hills” AVA may be found on the five (5) 1:24:000 scale U.S.G.S. Quadrangle 7.5-Minute Series maps included with the petition. The boundary is described in Sec. 9.162.

Paperwork Reduction Act

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

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 requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

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

Drafting Information

The author of this document is Joyce A. Drake, 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. Subpart C is amended by adding Sec. 9.162 to read as follows:

* * * *

Subpart C—Approved American Viticultural Areas

§ 9.162 Santa Rita Hills.

(a) Name. The name of the viticultural area described in this section is “Santa Rita Hills.”

(b) Approved maps. The appropriate maps for determining the boundary of the Santa Rita Hills viticultural area are five (5) U.S.G.S. Quadrangle 7.5 Minute Series maps titled:

- (1) “Lompoc, Calif.,” edition of 1959 (photorevised in 1982).
- (2) “Lompoc Hills, Calif.,” edition of 1959 (photoinspected 1971).
- (3) “Los Alamos, Calif.,” edition of 1959.
- (4) “Santa Rosa Hills, Calif.,” edition of 1959 (photoinspected 1978).

(5) "Solvang, Calif.," edition of 1959 (photorevised 1982).

(c) Boundary. The "Santa Rita Hills" viticultural area is located within Santa Barbara County, California. The boundary is as follows:

(1) The beginning point is found on the Solvang, California U.S.G.S. Quadrangle map at an unnamed hilltop, elevation 1600 feet, in section 27, T.6N, R. 32W, on the Solvang, Calif., Quadrangle U.S.G.S. map.

(2) Then proceed north and slightly west 2.3 miles to an unnamed hilltop elevation 1174 feet, Section 15, T.6N., R. 32W.

(3) Proceed west and slightly north 1.85 miles to an unnamed hilltop elevation 899 feet within the heart of the Santa Rosa Land Grant, T.7N., R. 32W, on the Santa Rosa Hills, Calif., Quadrangle U.S.G.S. map.

(4) Proceed north approximately 2 miles to an unnamed hilltop elevation 1063 feet within the northeastern part of the Santa Rosa Land Grant, T.7N, R. 32W, on the Los Alamos, Calif., Quadrangle U.S.G.S. map.

(5) Proceed northwest 1.1 miles to an unnamed hilltop elevation 961 feet. Section 29, T.7N., R. 32W.

(6) Proceed north and slightly east 1.1 miles to an unnamed elevation 1443 feet. Section 20, T. 7N., R. 32W.

(7) Proceed west 1.4 miles to an unnamed hilltop elevation 1479 feet. Section 24, T.7N., R. 33W.

(8) Proceed north 1.2 miles to an unnamed hilltop elevation 1705 feet. Section 13, T.7N., R. 33W.

(9) Proceed northwest approximately 2 miles to an unnamed hilltop elevation 1543. Section 10, T.7N., R. 33W.

(10) Proceed west and slightly south 1.6 miles to an unnamed hilltop elevation 935 feet within the northern section of the Santa Rosa Land Grant. T.7N., R. 33W.

(11) Proceed south by southwest 1.5 miles to an unnamed hilltop elevation 605 feet in the northern section of the Santa Rosa Land Grant. T.7N., R. 33W.

(12) Proceed west by southwest approximately 2 miles to the point where California Highway 246 intersects with the 200-foot elevation contour line comprising the western border of the Santa Rita Hills, within the Santa Rosa Land Grant. T.7N., R. 34W, on the Lompoc, Calif., Quadrangle U.S.G.S. map.

(13) Proceed following the 200 foot elevation contour line south along the western border of the Santa Rita Hills to the extreme southern tip of the 200 foot elevation contour that is .6 miles due west of an unnamed hilltop 361 feet in elevation in the Canada de Salispuedes Land Grant. T.6N., R. 34W.

(14) Proceed southeast 2.35 miles to an unnamed hilltop elevation 1070 feet. Section 18, T.6N., R. 33W, on the Lompoc Hills, Calif., Quadrangle U.S.G.S. map.

(15) Proceed east and slightly south 1.95 miles to an unnamed hilltop elevation 921 feet. Section 16, T.6N., R. 33W, on the Santa Rosa Hills, Calif., Quadrangle U.S.G.S. map.

(16) Proceed east by southeast 1.35 miles to an unnamed hilltop elevation 1307 feet at intersection between Sections 22 and 23. T.6N., R. 33W.

(17) Proceed east 2.35 miles to an unnamed hilltop elevation 1507 feet in the southern area of the Santa Rosa Land Grant. T.6N., 32W.

(18) Proceed east by southeast 2.1 miles to an unnamed hilltop elevation 1279 feet in the southern area of the Santa Rosa Land Grant. T.6N., 32W.

(19) Then proceed east by southeast 1.45 miles to the point of the beginning.

Signed: May 25, 2001

Bradley A. Buckles,
Director

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

**Volatile Fruit-Flavor Concentrate Shipments and Alternation With Other
Premises**

T.D. ATF-455

27 CFR Parts 18, 19 and 24

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

ACTION: Treasury decision, final rule.

SUMMARY: This final rule specifically authorizes the transfer of volatile fruit-flavor concentrate (VFFC) unfit for beverage use from one VFFC plant to another for further processing and permits facilities to be alternately used as a VFFC plant, a distilled spirits plant or a bonded wine cellar. This rule allows greater flexibility in the production processes and in the equipment and facilities of VFFC plants.

EFFECTIVE DATE: May 31, 2001.

FOR FURTHER INFORMATION CONTACT: Robert P. Ruhf, Regulations
Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; (202-927-8210) or at
alctob@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

Previously, ATF received a request to vary from the regulations in 27 CFR part 18, Production of Volatile Fruit Flavor Concentrate. This request was to allow the transfer of volatile fruit-flavor concentrate (VFFC) that is unfit for beverage use for further

processing from one proprietor of a volatile fruit concentrate plant to another. The current regulation regarding transfer of volatile fruit-flavor concentrate (27 CFR 18.54(a)) does not provide for such a transfer.

Another current regulation (27 CFR 18.51) allows the transfer to a producer's premises of "processing material" that is produced elsewhere subject to certain restrictions and recordkeeping requirements. However, the definition of "processing material" (27 CFR 18.11) does not include concentrate that is intended for further processing. Furthermore, the regulation at 27 CFR 18.56 allows only a VFFC proprietor to receive shipments of returned concentrate previously shipped by such proprietor.

Consequently, ATF proposed to amend the regulations in 27 CFR 18.56 to allow such transfers subject to the existing recordkeeping and reporting requirements of 27 CFR 18.56 (Notice No. 823, 61 FR 30017). At this time, ATF also solicited comments concerning other changes to part 18. Specifically, ATF requested comments about whether to allow facilities to be operated alternately as a VFFC plant, a distilled spirits plant, a bonded winery or other regulated facility.

Transfer of Concentrate

ATF is adopting the proposed regulations to allow VFFC proprietors to transfer, for further processing, volatile fruit-flavor concentrate that is unfit for beverage use. This change in the regulations allows VFFC proprietors greater flexibility without jeopardizing the revenue.

Alternation of VFFC Premises

In response to our request for other possible changes in Notice 823 (61 FR 30017), Distilled Spirits Council of the United States (DISCUS) supported the proposal for temporarily alternating VFFC plant with a distilled spirits plant, bonded wine cellar or other regulated facility. As a result, we have written regulations to allow facilities to be operated alternately as a VFFC plant, a distilled spirits plant, or a bonded wine cellar. We believe that limiting alternations between a VFFC and a distilled spirits plant or a bonded winery should address the present needs of all proprietors. However, ATF will consider any future request to alternate a VFFC plant with other regulated facilities.

In addition, DISCUS recommended that the Bureau "streamline" the evidence required for such alternations by using batch records. Under the provisions of the Internal Revenue Code (IRC), each type of regulated operation (for example, a distilled spirits plant, bonded wine cellar or volatile fruit-flavor concentrate plant) is subject to separate and distinct regulatory requirements. These regulatory requirements have been tailored to the particular operation being conducted in order to protect the revenue. Where particular premises are being alternated, ATF has found that the notice of alternation of premises is necessary to protect the revenue and is not unduly burdensome on businesses. The notice identifies the portion of the premises being alternated and identifies the operations that will occur and the specific time during which they will occur. Without this information, ATF would, at best, have difficulty in determining which type of operation was occurring at any particular place or time. Also, batch records would not necessarily allow ATF to verify records, reports, tax returns, and bonds that are required to be filed under the IRC

regulations, thus presenting a jeopardy to the revenue. Accordingly, ATF opposes the use of batch records to evidence alternation of premises.

Regulatory Flexibility Act

In accordance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is hereby certified that this final rule will not have a significant impact on a substantial number of small entities. This final rule liberalizes the regulations related to volatile fruit-flavor concentrate plants. Accordingly, a regulatory flexibility analysis is not required. As required by 26 U.S.C. 7805(f), a copy of this final rule was sent to the Chief Counsel for Advocacy of the Small Business Administration. No comments were received.

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.

Paperwork Reduction Act

The collections of information contained in this final rule have been reviewed and approved under the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)). The Office of Management and Budget (OMB) has issued control number 1512-0046 for this collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The additional collection of information in this regulation is in 27 CFR 18.39, 18.40 and 18.42. This information is required to make sure that a proprietor of a volatile fruit-flavor concentrate plant is properly qualified to alternate to a distilled spirits plant or a bonded wine cellar, and to record alternations of premises. ATF uses this information to ensure that persons are qualified and that operations are conducted in accordance with law and regulations. The collection of information is mandatory. The likely respondents may include small businesses or organizations.

ATF estimates the burden of qualification and recordkeeping at ten (10) additional respondents and an additional one hour per respondent. ATF estimates that the total annual reporting and/or recordkeeping burden under control numbers 1512-0046 is 40 hours.

Administrative Procedure Act

This final rule relieves restrictions on the operations of volatile fruit-flavor concentrate plants by allowing certain transfers of high-proof concentrate unfit for beverage use and providing for the alternation of VFFC plants with distilled spirits plants or bonded wine cellars. Consequently, it is exempt from the delayed effective date provisions of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 18

Alcohol and alcoholic beverages, Fruits, Labeling, Reporting and recordkeeping requirements, Spices and flavorings.

27 CFR Part 19

Administrative practice and procedure, Authority delegations (Government agencies), Chemicals, Claims, Custom duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Security measures, Spices and flavorings, Surety bonds, Transportation, Warehouses, Wine.

27 CFR Part 24

Administrative practice and procedure, Authority delegations (Government agencies), Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

Authority and Issuance

For the reasons set out in the preamble, 27 CFR parts 18, 19 and 24 are amended as follows:

PART 18—PRODUCTION OF VOLATILE FRUIT-FLAVOR CONCENTRATE

Paragraph 1. The authority citation for part 18 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5171-5173, 5178, 5179, 5203, 5351, 5354, 5356, 5511, 5552, 6065, 7805.

Par. 2. Section 18.11 is amended by adding the term “distilled spirits plant” in alphabetical order as follows:

§ 18.11 Meaning of terms.

* * * *

Distilled spirits plant. An establishment qualified under 27 CFR part 19, excluding alcohol fuel plants, for producing, warehousing, or processing distilled spirits (including denatured distilled spirits).

* * * *

Par. 3. A new section 18.39 is added before the heading “Subpart E—Operations” to read as follows:

§ 18.39 Qualification to alternate a volatile fruit-flavor concentrate plant and a distilled spirits plant.

A proprietor of a volatile fruit-flavor concentrate plant operating a contiguous distilled spirits plant may alternate the use of such premises between the two functions through extension and curtailment by filing with the appropriate ATF officer the following information:

- (a) ATF Form 27-G (5520.3) and ATF Form 5110.41 to cover the proposed alternation of premises;
- (b) A special diagram, in duplicate, delineating the premises as they will exist, both during extension and curtailment and clearly depicting all buildings, floors, rooms, areas, equipment and pipe lines (identified individually by letter or number) which are to be subject to alternation, in their relative operating sequence; and
- (c) A bond or a consent of surety to cover the proposed alternation of premises.

(Approved by the Office of Management and Budget under control number 1512-0046)

Par. 4. A new section 18.40 is added before the heading “Subpart E—Operations” to read as follows:

§ 18.40 Qualification to alternate volatile fruit-flavor concentrate plant and bonded wine cellar.

A proprietor of a volatile fruit-flavor concentrate plant operating a contiguous bonded wine cellar may alternate the use of each premise by extension and curtailment by filing with the appropriate ATF officer the following information:

- (a) ATF Form 27-G (5520.3) and ATF Form 5120.25 to cover the proposed alternation of premises;
- (b) A special diagram, in duplicate, delineating the premises as they will exist, both during extension and curtailment and clearly depicting all buildings, floors, rooms, areas, equipment and pipe lines (identified individually by letter or number) which are to be subject to alternation, in their relative operating sequence; and
- (c) A bond or a consent of surety to cover the proposed alternation of premises.

(Approved by the Office of Management and Budget under control number 1512-0046)

Par. 5. A new section 18.41 is added before the heading “Subpart E—Operations” to read as follows:

§ 18.41 Separation of premises.

The appropriate ATF officer may specify additional means of separating the volatile fruit-flavor concentrate plant from a distilled spirits plant or bonded wine cellar premises.

Par. 6. A new section 18.42 is added before the heading “Subpart E—Operations” to read as follows:

§ 18.42 Record of alternation.

After approval of the qualifying documents for the alternation of premises, the proprietor must execute a record each time that the premises are alternated. The record will contain the following information:

- (a) Identification assigned by ATF, including the plant or registry number, of the volatile fruit-flavor concentrate plant and the distilled spirits plant or bonded wine cellar;
- (b) Effective date and time of proposed change; and
- (c) Description of the alternation that identifies the diagrams depicting the premises before and after the alternation.

(Approved by the Office of Management and Budget under control number 1512-0046)

Par. 7. A new section 18.43 is added in Subpart D to read as follows:

§ 18.43 Conditions of alternation.

(a) Curtailment of volatile fruit-flavor concentrate plant. The proprietor must remove all concentrate, fruit mash, and juice from the volatile fruit-flavor concentrate plant alternated to a distilled spirits plant or to a bonded wine cellar premises, unless such concentrate, fruit mash, or juice is being simultaneously transferred to the distilled spirits plant or bonded wine cellar premises.

(b) Extension of volatile fruit-flavor concentrate premises and curtailment of distilled spirits plant. The proprietor must remove all spirits, denatured spirits, articles and wine, except for concentrate, fruit mash, or juice that is being simultaneously transferred to the volatile fruit-flavor concentrate plant.

(c) Extension of volatile fruit-flavor concentrate premises and curtailment of bonded wine cellar premises. The proprietor must remove all wine and spirits from the alternated bonded wine cellar premises, except for concentrate, fruit mash, or juice that is being simultaneously transferred to the volatile fruit-flavor concentrate plant.

Par. 8. Section 18.56 is revised to read as follows:

§ 18.56 Receipt of concentrate.

(a) General. The proprietor of a concentrate plant may accept the return of concentrate that the proprietor shipped. In addition, concentrate that is unfit for beverage use may be

received from another concentrate plant for further processing in accordance with this part.

(b) Record of concentrate received. When concentrate is received, the proprietor must record the receipt, including the name of the consignor and a notation regarding any loss in transit or other discrepancy.

(Approved by the Office of Management and Budget under control number 1512-0098)

PART 19—DISTILLED SPIRITS PLANTS

Par 9. 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.

Par. 10. A new section 19.207 is added before the undesignated center heading of “Permanent Discontinuance of Business” to read as follows:

§ 19.207 Alternate use of distilled spirits plant and volatile fruit-flavor concentrate premises.

If a proprietor of distilled spirits plant wishes to use all or a portion of such premises alternately as a volatile fruit-flavor concentrate plant or vice-a-versa, the proprietor must comply with the requirements of Secs. 18.39 and 18.41 through 18.43 of this title.

PART 24—WINE

Par. 11. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111-5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364-5373, 5381-5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 12. A new sentence is added at the end of Sec. 24.135(a) to read as follows:

§ 24.135 Wine premises alternation.

(a) General. * * * If a proprietor of a bonded wine cellar or winery wishes to use all or a portion of such premises alternately as a volatile fruit-flavor concentrate plant or vice-a-

versa, the proprietor must comply with the requirements of Secs. 18.40 through 18.43 of this title.

* * * *

Signed: March 6, 2001

Bradley A. Buckles,
Director

Approved: March 14, 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

Diamond Mountain District Viticultural Area

T.D. ATF-456

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

ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision will establish a viticultural area in Napa County, California, to be known as “Diamond Mountain District.” This viticultural area is a result of a petition submitted by Rudy von Strasser of Von Strasser Winery on behalf of the Diamond Mountain Appellation Committee, representing 15 growers and vintners in the proposed area.

EFFECTIVE DATE: July 31, 2001.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, 111 W. Huron Street, Room 219, Buffalo, New York 14202-2301, (716) 551-4048.

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 on wine labels and in wine advertisements. 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?

An American viticultural area is a delimited grape-growing region distinguishable by geographic 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 characteristics (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 (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Rulemaking Proceeding

Petition

Rudy von Strasser of Von Strasser Winery petitioned ATF for the establishment of a viticultural area in Napa County, California, to be called "Diamond Mountain." The petition was filed on behalf of the Diamond Mountain Appellation Committee, whose 15 growers and vintners represent 87 percent of the total vineyard holdings in the viticultural area. The proposed viticultural area is located entirely in Napa County, California and encompasses approximately 5,000 acres, of which approximately 450 acres are planted to vineyards.

Notices of Proposed Rulemaking

A Notice of Proposed Rulemaking, Notice No. 882, was published in the Federal Register on September 29, 1999, requesting comments from all interested persons

concerning the proposed viticultural area. The comment period was to close on November 29, 1999. On November 15, 1999, ATF received a request from Fred and Mary Constant of Diamond Mountain Vineyard to extend the comment period an additional 60 days. Diamond Mountain Vineyard is located within both Napa and Sonoma Counties, partially within the boundaries proposed for the Diamond Mountain viticultural area. According to the winery, it had been unable to get timely and complete information on the specifics of the proposal and therefore it needed additional time to prepare its comments. In view of this, on November 26, 1999, ATF published Notice No. 886 extending the comment period until January 28, 2000.

Comments

Thirty-nine comments were received in response to Notice 882. Thirty-seven of the comments favored adoption of the viticultural area as proposed. Twenty-five of these specifically supported the use of the Napa and Sonoma county line as one of the boundary lines for proposed area. These commenters maintained that because the name “Diamond Mountain” has always been associated with Napa Valley, the boundaries should not encompass any areas outside Napa County.

Fred and Mary Constant of Diamond Mountain Vineyards submitted two comments proposing two changes to the proposed viticultural area. First, they proposed changing the name to “Diamond Mountain District.” The Constants argued that because the proposed area does not physically encompass all of Diamond Mountain, as identified on the U.S.G.S. map included in the petition, the name “Diamond Mountain” could be confusing. The Constants, who own a trademark for the name “Diamond Mountain Vineyard”, also felt that “Diamond Mountain District” would reduce confusion and conflicts with their trademark, their winery name, and other Diamond Mountain trademarks. As evidence for the use of this name, the Constants submitted two documents in which “District” is used in association with “Diamond Mountain”. One, a 1913 school board document, twice referred to the Diamond Mountain school district. The other, an article from the 12/4/99 issue of the Wine Business Insider on the proposed Diamond Mountain viticultural area, used the phrase “Diamond Mountain District”.

The Constants also proposed amending the southwestern boundary of the viticultural area to include their Sonoma county property. Their vineyard, Diamond Mountain Vineyard, straddles the Napa and Sonoma county line. Fifty-five of its acres are located in Napa County within the proposed boundaries of the Diamond Mountain viticultural area, while 15 of its acres are in Sonoma county, just outside the proposed boundaries. The Constants argued that their Sonoma property is on Diamond Mountain and should therefore be included in any viticultural area bearing its name. Referring to the U.S.G.S. map submitted by the petitioners (Calistoga, CA 1993, 1:24,000), they pointed out that much of Diamond Mountain, including its peak, is actually in Sonoma County.

Their proposal was supported by their assertion that the climate and soil of their Sonoma property is indistinguishable from that of their Napa property. They stated that it is unlikely for climate to vary dramatically over a distance of a few hundred feet on the same side of a mountain. The elevation of their Sonoma property is not an issue, according to the Constants, because the highest part of their Sonoma property is no higher than the highest part of their Napa property. The soil, they asserted, is also

consistent between their Napa and Sonoma parcels. The Constants did not provide any evidence supporting this claim.

Additionally, the Constants stated that their vineyard, originally planted to vines around 1900 by Andrew Rasmussen, is one of the oldest on Diamond Mountain. They submitted several pieces of evidence which mention the Rasmussen vineyards as located on Diamond Mountain near the Napa-Sonoma County line. Because of the historical importance of their vineyard, the Constants felt it should be included in the viticultural area in its entirety.

Finally, the Constants stated that the division of their vineyards by the viticultural area boundaries will create an administrative and financial burden for them by forcing them to track the origin of their grapes.

Petitioners' Response

The petitioners, in counter comments, initially disagreed with both the proposed name change and the proposal to include Sonoma County property in the viticultural area, calling the evidence cited for these changes weak.

On January 22, 2001, the petitioners wrote to ATF stating that they had reconsidered and now wished to change the name of the viticultural area to "Diamond Mountain District." However, they stated that they were against any change in the proposed boundaries.

While the petitioners acknowledged that Diamond Mountain's peak is in Sonoma County, they argued that historical and current usage of the name is strongly associated with Napa, not Sonoma, County. The petitioners submitted, as part of either the petition or counter comments, over 40 articles referencing Diamond Mountain as a grape growing area in Napa Valley or Napa County. The petitioners felt that including Sonoma County land in a viticultural area associated with Napa Valley would be confusing to the public.

The petitioners also submitted, as part of their counter comments, a document written by wine historian William F. Heintz titled "Diamond Mountain—An Overview of its History & the Rasmussens on Diamond Mountain Napa County, California." Mr. Heintz found historical records indicating that "Diamond Mountain" was a Napa County region name and road name before it was used for the mountain peak. According to Mr. Heintz's research, the earliest use of the name on a Sonoma County map was in 1970. Thus, the petitioners argued, "Diamond Mountain" is historically a Napa County name.

Mr. Heintz also researched the history of the Rasmussen's vineyards by examining Napa and Sonoma County assessment records and interviewing individuals familiar with the Rasmussen/Constant property. He concluded that the Rasmussens never grew grapes on the Sonoma portion of their property. Two commenters concurred, stating their personal observations of the property in question showed that, prior to the Constants' ownership, it was heavily forested and contained no evidence of old grape plantings.

Finally, the petitioners argued that the division of the Constants' vineyards by the viticultural area boundary would not create a financial or administrative burden. They pointed out that this boundary is already one of the boundaries of the Napa Valley viticultural area. They argued that the Constants knowingly purchased a parcel in Sonoma, on the other side of the present Napa Valley boundary, thus choosing to divide their vineyard holdings. Their financial and administrative burden, the petitioners

maintained, would not change with the establishment of the proposed Diamond Mountain District boundaries.

ATF Analysis of Comments

After careful review of the comments, ATF has concluded that the evidence provided supports the creation of the viticultural area with the name “Diamond Mountain District” and with the boundaries as originally proposed.

Name

ATF finds that sufficient evidence has been submitted to support the name “Diamond Mountain District.” In addition to insuring that the viticultural name is that by which the area is locally and/or nationally known, ATF must also insure that the name is not false or misleading to the consumer. While the evidence shows that the area has also been called “Diamond Mountain”, ATF finds that this name could be confused with the Constants’ winery, Diamond Mountain Vineyards. ATF therefore feels that the name “Diamond Mountain District” is a better choice. This name is known to refer to the viticultural area and is not misleading.

Boundaries

ATF finds that the evidence provided by Fred and Mary Constant is not sufficient to change the boundaries as originally proposed. In order for ATF to adopt their proposal, the evidence would need to show that: (1) Their Sonoma County property is recognized by consumers and the wine industry as part of the viticultural area, and (2) their Sonoma County property shares geographic characteristics with the viticultural area. Both of these elements must be proved by the evidence for the proposal to be adopted.

First, the Constants did not establish that their Sonoma County property is recognized as part of the viticultural area. To provide name recognition and boundary evidence, the petitioners submitted over forty articles from newspapers, magazines, and reference books referring to Diamond Mountain as a wine region in Napa Valley or Napa County. None of these articles mention wineries or vineyards in Sonoma County.

Both the petitioners and the Constants referenced an article from the January-February 1977 issue of *Connoisseurs’ Guide to California Wine* titled “Napa Valley Appellations.” This article identifies Diamond Mountain as one of several Napa Valley areas having unique grape-growing characteristics. In their comments, the Constants quote this article, “We would identify the whole mountain area west of the Valley and north of Spring Mountain as Diamond Mountain,” and argue that it supports the inclusion of their vineyard in the viticultural area. However, because of the vagueness of this description, and the fact that this article is clearly referencing Napa Valley areas, ATF does not find this article to be sufficient evidence for the Constants’ proposed boundaries.

Both the Constants and the petitioners presented arguments on whether the Rasmussens grew grapes on the Constants’ Sonoma parcel on Diamond Mountain. The petitioners submitted several pieces of evidence that persuasively indicated that while the Rasmussens did grow grapes on their Napa property, they did not grow any on their

Sonoma property. The Constants' evidence was more general and merely established the site of the Rasmussens' property, and not that they grew grapes in Sonoma County. After analysis of the combined evidence, ATF finds that the Sonoma County portion of Diamond Mountain does not share the viticultural history of the Napa County portion.

Second, the Constants did not establish that their Sonoma County property shares geographic characteristics with the proposed viticultural area. It is indisputable that the geographic feature called "Diamond Mountain", as depicted on the petitioners' U.S.G.S. map, includes part of Sonoma County and the Constants' vineyard. However, ATF has created other viticultural areas named for a mountain that do not encompass the entire mountain. In many cases, separate areas of a mountain may have varying climates, soils, or other geographic features, thus creating different grape growing conditions. For example, when establishing the Bell Mountain viticultural area (T.D. ATF-238), ATF cited the soils and topography in its decision to include only the south and southwestern slopes of Bell Mountain in the viticultural area. In another example, the higher elevations of Sonoma Mountain were not included in the Sonoma Mountain viticultural area (T.D. ATF-196) because of climate and topography. In cases such as these, the viticultural area should not encompass the entire mountain since geographic features (climate, soil, elevation, physical features) should be similar within the viticultural area. In the case of Diamond Mountain District, the petitioners have submitted persuasive evidence that the soil and climate in the Napa County part of Diamond Mountain are different from those in the adjacent part of the mountain in Sonoma County. In view of this, the evidence must show that the Constants' Sonoma parcel not only is physically on Diamond Mountain, but also shares similar soil and climatic conditions with the petitioner's proposed viticultural boundaries. Because the Constants have not submitted any evidence regarding the climate or soils of their proposed boundaries, ATF cannot determine if they are similar to those in the proposed viticultural boundaries proposed by the petitioner.

Taken as a whole, the historic and current evidence regarding the boundaries supports the original boundaries proposed by the petitioners. No evidence was present that associated Sonoma County or the Constants' Sonoma vineyard with the grape growing area known as "Diamond Mountain District." ATF's conclusion is that the Diamond Mountain District is locally and nationally known as referring to that part of Diamond Mountain in Napa County. This, along with the petitioners' climate and soil evidence, supports designating only the Napa County part of Diamond Mountain as the viticultural area "Diamond Mountain District."

Evidence That the Name of the Area is Locally or Nationally Known

The Diamond Mountain District has been home to vineyards and wineries since the 1860's. According to the petitioner's evidence, a Mr. Joseph Schram planted his first vines as early as 1863 and had a hundred acres of vineyards by 1892.

According to the petitioner, the evolution of Diamond Mountain into a Napa Valley regional name began in the early decades of the 20th century, with Diamond Mountain School and Diamond Mountain Road being the first features in the region to bear the name. The naming of the school took place in 1909, with the major access road in the region designated as Diamond Mountain Road shortly thereafter. The petitioner has also

presented substantial evidence that the Diamond Mountain District began to gain national renown in the early 1970's, as expanding consumer interest in California wines resulted in new vineyards, new wineries and a greater awareness of regional wine character. As evidence for this national name, the petitioner included an excerpt from the second edition of *The Wines of America* by Leon Adams that states, "Diamond Mountain, like Mt. Veeder and Spring Mountain also on the west side of Napa Valley, is regarded as a viticultural district separate from the rest of Napa Valley."

Historical or Current Evidence That the Boundaries of the Viticultural Area are as Specified in the Petition

According to the petitioner, precise boundaries for the region being proposed have never been delineated. The evidence submitted, however, shows that the Diamond Mountain District's viticultural history and identity are strongly associated with Napa Valley. For this reason, the boundaries of the viticultural area are entirely within Napa County. According to the petitioner, the petition took a conservative approach to establishing boundaries for the Diamond Mountain District. The petitioner stated that special care was taken to assure that the boundaries encompass only those lands that meet both the historic and geographic criteria for inclusion in the viticultural area. Also, the boundaries have been drawn to respect neighboring regions with separate names, histories, geographic features and political boundaries. The petitioner cited the Fourth Edition of *The Connoisseurs' Handbook of the Wines of California and the Pacific Northwest* for a description of the proposed area "* * * a portion of the Napa Valley's western hills between St. Helena and Calistoga". This citation was accompanied by a map which shows the rough limits of the region: Spring Mountain to the south, the 400 foot elevation that generally parallels Highway 29 to the east, Petrified Forest Road to the north and the Napa-Sonoma County line to the west.

The petitioner chose the 400-foot contour line for the northeastern boundary to accurately reflect the lowest elevation of vineyards historically associated with the Diamond Mountain District. The use of the Napa-Sonoma County line as the southwestern boundary acknowledges the historic association of the Diamond Mountain District viticultural area with Napa County and Napa Valley, and also recognizes the differences in history and geography that distinguish Diamond Mountain from adjacent slopes of the Mayacama Mountains in Sonoma County.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, etc.) Which Distinguish Viticultural Features of the Area From Surrounding Areas

There is evidence in the record that the geographical features in the Diamond Mountain District viticultural area clearly distinguish it from surrounding areas. The Diamond Mountain District is situated in the Napa Valley on the eastern slope of the Mayacamas Mountains. The region consists entirely of residual upland soils derived from volcanic parent material. These soils are very different from the alluvial soils on the floor of the Napa Valley to the east and northeast and are also significantly different from the sedimentary upland soils prevalent in the Spring Mountain viticultural area to the south.

These soils are significantly different from the shallow, dry soils in Sonoma County to the west and southwest. According to the petitioner, the viticultural area's topography and aspect contribute to a special microclimate. Hillside topography and valley temperature inversions combine to give the region an unusually moderate temperate regime during a growing season, with lower maximum temperatures and higher minimum temperatures than nearby locations on the floor of the Napa Valley. The petitioner stated that the microclimate of the Diamond Mountain District is clearly distinctive when compared to the surrounding areas. The region's microclimate is slightly warmer than that of the Spring Mountain District to the south, but somewhat similar due to comparable upland locations, northeastern (eastern, in Spring Mountain's case) aspects, and cooling influence of marine breezes from the Pacific Ocean. The microclimate is significantly cooler than the floor of the Napa Valley to its northeast and north, due to various tempering influences primarily associated with its upland location. So too is it cooler than adjacent land to the west in Sonoma County, due to its predominantly northeastern aspect which provides oblique sun and shade in the afternoon, while the western aspect of the Mayacamas Mountains adjacent to the region in Sonoma County is clearly hotter and drier.

Boundaries

The viticultural area is located in Napa County, California. The approved USGS maps for determining the boundary of the Diamond Mountain District viticultural area are, "Mark West Springs, Calif.", 7.5 minute series, edition of 1993, and the "Calistoga, Calif.", 7.5 minute series, edition of 1993. The northeastern boundary follows the 400-foot contour line from Ritchey Creek northwest to the Petrified Forest Road and the northern boundary follows the Petrified Forest Road west from the 400-foot contour line to the Napa-Sonoma county line. The southwestern boundary follows the official boundary line between Napa and Sonoma counties southeast from Petrified Forest Road to the east-west boundary between Sections 18 and 19 in Township 8 North, Range 6 West, Mount Diablo Range and Meridian. The southern boundary follows the boundary between Sections 18 and 19, Sections 17 and 20 and Ritchey Creek east from the Napa-Sonoma county line to the 400-foot elevation line. It also corresponds with the Northern Boundary of the Spring Mountain District viticultural area.

Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Rule?

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 rule because no requirement to collect information is imposed.

How Does the Regulatory Flexibility Act Apply to This Rule?

These regulations will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement or

approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, 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 that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

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 by Executive Order 12866. Therefore, a regulatory assessment is not required.

Drafting Information

The principal author of this document is Jennifer Berry, 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.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding Sec. 9.166 to read as follows:

§ 9.166 Diamond Mountain District

(a) Name. The name of the viticultural area described in this section is “Diamond Mountain District.”

(b) Approved Map. The appropriate maps for determining the boundary of the Diamond Mountain District viticultural area are two 1:24,000 Scale U.S.G.S. topography maps.

They are titled:

(1) Mark West Springs, CA 1993

(2) Calistoga, CA 1993.

(c) Boundaries. The viticultural area is located in Napa County, California. The beginning point is where the boundary between Napa and Sonoma counties intersects Petrified Forest Road in Section 3 of Township 8 North, Range 7 West, Mount Diablo Base and Meridian on the Mark West Springs map;

(1) Then north and east along Petrified Forest Road approximately 1.9 miles to the point where it intersects the 400-foot contour just east of Section 35 of Township 9 North, Range 7 West, Mount Diablo Base and Meridian, in the Mallacomes land grant;

(2) Then generally east southeast along the 400-foot contour approximately 6.5 miles to the point where it intersects Ritchey Creek in Section 3 of Township 8 North, Range 6 West, Mount Diablo Base and Meridian;

(3) Then west southwest along Ritchey Creek approximately 2.2 miles to the point where it intersects the boundary between Sections 17 and 20 of Township 8 North, Range 6 West, Mount Diablo Base and Meridian;

(4) Then due west in a straight line along the section boundary approximately 0.8 miles to the point where it intersects the boundary between Napa and Sonoma Counties between Sections 18 and 19 of Township 8 North, Range 6 West, Mount Diablo Base and Meridian;

(5) Then generally northwest along the boundary between Napa and Sonoma Counties approximately 4.2 miles to the point where it intersects Petrified Forest Road, to the point of beginning.

Signed: April 13, 2001

Bradley A. Buckles,
Director

Approved: April 19, 2001

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