

determination of the duties owed. In certain extreme circumstances, this factor may include the removal of an offending employee. The correction of organizational or procedural defects will not be considered a mitigating factor. It is expected that any importer or other involved individual will seek to remove or change any condition which contributed to the existence of a violation.

(4) *Inexperience in Importing.* Inexperience is a factor only if it contributes to the violation and the violation is not due to fraud or gross negligence.

(5) *Prior Good Record.* For the violator to benefit from this factor, the violation must have occurred as a result of negligence or gross negligence, and the violator must be able to show a consistent pattern of importations without violation of section 592, or any other statute prohibiting false or fraudulent importation practices.

#### (G) *Aggravating Factors*

Certain factors may be determined to be aggravating factors in arriving at the final mitigated penalty decision. Examples of aggravating factors include obstructing the investigation, withholding evidence, providing misleading information concerning the violation, and prior substantive violations of section 592 for which a final administrative finding of culpability has been made.

#### (H) *Extraordinary Factors Justifying Further Relief*

(1) The four factors specified below may be considered in connection with further relief. Such relief may be accorded for extraordinary factors not specified below only upon the concurrence of the Chief, Commercial Fraud and Negligence Penalties Branch, Headquarters.

(a) *Inability to obtain jurisdiction over the violator or inability to enforce a judgement against the violator.*

(b) *Inability to Pay the Mitigated Penalty.* The party claiming the existence of this factor must present documentary evidence in support thereof, i.e., copies of income tax returns, current financial statements, and independent audit reports.

(c) *Extraordinary Expenses.* This factor may include such expenses as those incurred in providing one-time computed runs solely for submission to Customs to aid it in analyzing a case involving an unusual number of entries, with each entry involving several factors, i.e., violations involving item 807, Tariff Schedules of the United States. Usual accounting and legal expenses (both general and Customs), or the cost incurred in instituting remedial action would not be considered extraordinary expenses.

(d) *Customs Knowledge.* Additional relief will be granted if it is determined that Customs had actual knowledge of a violation and failed to inform the violator so that it could have taken earlier corrective action. In such cases, if a penalty is to be assessed involving repeated violations of the same kind, and if it is determined that the violations were not the result of fraud, the maximum penalty amount for violations occurring after the date on which actual knowledge was obtained by Customs will be

limited to the lesser of two times the loss of revenue or five percent of dutiable value if the continuing violations were the result of gross negligence, or the lesser of one time the loss of revenue or two percent of dutiable value if the violations were the result of negligence. This factor shall not be applicable when a substantial delay in the investigation is attributable to the violator.

(2) *Providing Evidence or Information concerning the Violation.* Additional relief will be granted if a person discloses the circumstances of a violation by providing evidence or information which is not in Customs possession or knowledge and/or which had not been requested by a Customs officer, although the disclosure does not meet the requirements for a prior disclosure in § 162.74, Customs Regulations (19 bCFR 162.74). If the appropriate Customs officer is satisfied that the disclosure was made before, or without knowledge of, the commencement of a formal investigation, the maximum mitigated penalty for the disclosed violation will be limited as follows:

(a) In the case of fraudulent violations, two times the loss of revenue or, if the violation did not result in a loss of revenue, 20 percent of the dutiable value of the merchandise;

(b) In the case of grossly negligent violations, one-half of the loss of revenue or, if the violation did not result in a loss of revenue, five percent of the dutiable value of the merchandise;

(c) In the case of negligent violations, one-quarter of the loss of revenue or, if the violation did not result in a loss of revenue, two and one-half percent of the dutiable value of the merchandise.

#### (I) *Customhouse Brokers*

A customhouse broker shall be subject to the above guidelines only if he is determined to have (1) committed a fraudulent or grossly negligent violation; or (2) committed a negligent violation and shared in the financial benefits of the violation to an extent over and above the prevailing brokerage fees. If the broker committed a negligent violation without sharing in the financial benefits over and above the prevailing brokerage fees, the penalty should be mitigated to a flat sum not to exceed \$250. A broker is not negligent if he acts with reasonable care (as measured by the prevailing standards of the profession) in the preparation and presentation of the entry or the entry summary, and reasonably relies on the information or documents supplied to him by the actual owner, consignee, shipper, or their agent.

#### (J) *Arriving Travelers*

(1) *Liability.* Assessment of penalties and determination of degrees of culpability for violations by an arriving traveler must be determined in accordance with the above guidelines.

(2) *Limitations on Liability.* (a) In the absence of a referral for criminal prosecution, monetary penalties assessed in the case of a first-offense, non-commercial, fraudulent violation by an arriving traveler will generally be limited to an amount ranging from a minimum of three times the loss of revenue to a maximum of five times the loss of revenue, provided the loss of revenue is also paid.

(b) No penalty cases shall be initiated against an arriving traveler if the violation is not fraudulent, the loss of revenue is \$100 or less, and there are no prior violations of section 592 or other statutes prohibiting false or fraudulent importation practices. However, all lawful duties shall be collected.

#### (K) *Violations of Laws Administered by Other Federal Agencies*

Violations of laws administered by other federal agencies (such as Foreign Assets Control, Agriculture, Fish and Wildlife) should be referred to the appropriate agency for its recommendation. Such recommendation, if promptly tendered, will be given due consideration, and may be followed provided the recommendation would not result in a disposition inconsistent with these guidelines.

William von Raab,  
Commissioner of Customs.

Approved: October 15, 1982.

John M. Walker, Jr.,  
Assistant Secretary of the Treasury.

[FR Doc. 82-30183 Filed 11-2-82; 8:45 am]

BILLING CODE 4820-02-M

## Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Part 9

[Notice No. 431]

#### Arroyo Seco Viticultural Area; Proposed Establishment

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms is considering the establishment of an American viticultural area in California known as "Arroyo Seco." This proposal is the result of a petition from the Arroyo Seco Winegrowers and Vintners, an organization composed of bonded wineries and grape-growers with vineyards within the proposed viticultural area. The establishment of viticultural areas and the use of viticultural area names in wine labeling and advertising will allow wineries to better designate the specific grape-growing area where their wines come from, and will enable consumers to better identify the wine they purchase.

**DATE:** Written comments must be received by December 20, 1982.

**ADDRESS:** Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044-0385, Attention: Notice No. 431.

Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4405, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, Telephone: 202-566-7626.

**SUPPLEMENTARY INFORMATION:**

**Background**

ATF regulations in 27 CFR Part 4 allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Section 9.11, Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. 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) Historic or current evidence that the boundaries of the viticultural area are as specified in the petition;
- (c) Evidence relating to the geographic characteristics (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 are 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. maps with the boundaries prominently marked.

**Petition**

ATF has received a petition to establish a viticultural area located within Monterey County, California, to be known as Arroyo Seco. The proposed area is a triangular-shaped area adjacent to the Arroyo Seco Creek which flows into the Salinas River near Soledad. The total area comprising the Arroyo Seco viticultural area is 28.5 square miles. The petitioner, Arroyo Seco Winegrowers and Vintners, is an

association composed of grape-growers and bonded wineries which have vineyards within the proposed area. Their petition is based on the following information:

(a) Arroyo Seco is the name given to a land grant and rancho existing in the vicinity of the proposed viticultural area. Arroyo Seco, meaning "dry creek" is the name of the creek flowing through the viticultural area.

More recently, Arroyo Seco has become known as a grape-growing region. Vineyards were first planted in the area in 1962 by Mirassou Sales, a San Jose Winery. In 1963, Wente Brothers of Livermore, California, planted vineyards along the Arroyo Seco Creek which are commonly known as Wente's Arroyo Seco Vineyards. Since 1963, many other vineyards have been planted in the Arroyo Seco region and that term has been used in numerous magazines, newspapers, and wine publications in describing wines from this region.

(b) Wine grapes were first planted in the vicinity of Arroyo Seco between 1830 and 1840 at the nearby Mission Soledad. Winegrowing, however, never became popular throughout Monterey County because it was considered a "poor area" for viticulture. Strong winds off Monterey Bay and the arid climate of the Salinas River Valley deterred the planting of wine grapes in Monterey County. However, since the late 1800's, the Salinas Valley has been widely planted with vegetables, and it is known as the "salad bowl of the world."

During Prohibition, only 400 acres of vineyards survived in Monterey County, and this acreage was halved in the years following Repeal.

It was not until the early 1960's that vineyards were planted in the Arroyo Seco region of Monterey County. Three wineries, Paul Masson, Wente Brothers, and Mirassou, feeling the effects of urbanization in Santa Clara and Alameda Counties, began searching for new areas in California in which to plant vineyards. These wineries noted the conclusion of a report prepared by professors Maynard Amerine and A. J. Winkler of the University of California at Davis. Their report concluded that Monterey County contained Region I and II climatic areas and was suited to the growing of premium quality grapes. Regarding soils within Monterey County, the report contained the specific conclusion: "A number of soils in different areas of the Salinas Valley are adapted for grapes. Yet the greatest promise is offered by the Greenfield series of soils [now classified as Chular, Arroyo Seco and possibly other soil series] that occupies the lower gentle

slopes on the terrace west of the Salinas River, extending from about opposite Gonzales to and including the Arroyo Seco Valley."

Acting on the recommendations contained within the Amerine-Winkler report, Paul Masson and Mirassou planted vineyards between Soledad and Greenfield in 1962. The following year, Wente Bros. planted vineyards along the Arroyo Seco Creek west of Greenfield. The first wines were produced from Arroyo Seco grapes in 1966.

The success of these first vineyards in the Salinas Valley prompted other grape-growers to plant within the Valley. Since 1962, nearly 34,000 acres of vineyards have been planted in Monterey County. The proposed Arroyo Seco viticultural area contains approximately 8,500 acres of premium varietal grapes including Pinot Blanc, Riesling, Gewurztraminer, Chardonnay, Gamay, Cabernet Sauvignon, Petit Sirah, and Sauvignon Blanc. A majority of grapes from the Arroyo Seco district are shipped to wineries out of the region for processing; however, there are currently two bonded wineries within the viticultural areas. An added benefit of planting in Monterey County is that phylloxera is not present in the soil allowing the planting of vinifera grapes on their own rootstock.

(c) Topography of the Arroyo Seco viticultural area distinguishes it from surrounding areas. The Arroyo Seco area is sloping bench land surrounding the Arroyo Seco Creek. The highest elevations of over 600' occur on the Sierra de Salinas to the west, foothills of the Santa Lucas Mountains. A sloping ridgeline of between 500' and 300' in elevation separates Arroyo Seco from areas immediately to the south. From these elevations, the area slopes gradually downward to the lowest points of 180' elevation on the north along the Arroyo Seco Creek, and 220' elevation on the west along the Salinas River. It is this sloping bench land high above the Salinas River which provides adequate drainage and freedom from frost for vineyards within the Arroyo Seco viticultural area.

The proposed viticultural area also includes land immediately adjacent to the Arroyo Seco Creek where the creek enters the Sierra de Salinas.

(d) The climate of the Arroyo Seco area is unique in the amount of rainfall, temperature range, and the variability of the winds.

The major climatic influences are the Pacific Ocean and Monterey Bay. To the west of Arroyo Seco, the Santa Lucas Mountains block the damaging Pacific rains from the area. Winds off the

Pacific Ocean, however, blow down the Salinas River Valley, cooling the valley and providing a moderate climate.

These winds blow almost every afternoon during the growing season, and attain velocities of 15-30 miles per hour. Within the Salinas Valley, the juxtaposition of the Sierra de Salinas to the Arroyo Seco Valley causes the winds to be stronger east of U.S. Highway 101. A pocket-like effect is created within the Arroyo Seco Valley which has milder wind currents. Therefore, the eastern boundary of most of the viticultural area is Highway 101.

The cooling effects of the wind make the northern Salinas Valley quite cold. Gonzales is classified as Region I on the California Davis scale with 2350 degree days. In the Arroyo Seco area, the climate is considered Region II. Soledad, to the immediate north, registers 2880 degree days while Wente's Arroyo Seco Vinyards average between 187 and 2250 degree days. The cooling effect of the wind diminishes further south. King City averages 3150 degree days, placing it in Region III while San Miguel is classified as Region IV. The growing season in the Arroyo Seco region is approximately 245 days.

Rainfall is sparse in the proposed Arroyo Seco area. Soledad averages just 9.5 inches per year, less than received to the north where Salinas averages 13.7 inches and Gonzales 12.3 inches per year. Because of the sparse rainfall, all vinyards within the Arroyo Seco region irrigate, using water from the Arroyo Seco Creek rather than from the Salinas River.

(e) The soils in the Arroyo Seco area consist of a series of gravelly and fine sandy loams well suited to the cultivation of grapes. The proposed viticultural area consists of an alluvial fan formed by well drained soils with slopes ranging from 0 to 9 percent. Principal soil series include Mocho, Lockwood, Arroyo Seco, Rincon, Elder, and Chular. The prominent soils, Chular and Arroyo Seco, are coarse sandy loams derived from decomposed granite washed down from the Gavilan Mountains. These soils are gravelly and low in lime content similar to the vinyards in the Medoc and Graves districts of Bordeaux, and to the better vinyards in the Palatinate.

(f) The boundaries of the proposed Arroyo Seco viticultural area are based on a combination of climate, physical features, soils and irrigation sources. The proposed boundaries and the appropriate U.S.G.S. maps are fully described in the regulatory language. ATF notes that it has received a petition for an adjacent viticultural area

immediately south of the proposed Arroyo Seco area.

#### Public Participation

ATF requests comments from all interested persons concerning the proposed viticultural area. All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of any person submitting comments is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on this proposed viticultural area should submit his or her request, in writing, to the Director within the 45-day comment period. The Director reserves the right to determine whether a public hearing should be held.

#### Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because this proposed rule, if issued as a final rule, will not have a significant economic impact on a substantial number of small entities. This rule, if adopted, will allow the petitioner or other persons to use an appellation of origin, "Arroyo Seco," on wine labels and in wine advertising. ATF has determined that this rule neither imposes new requirements on the public nor removes existing privileges available to the public. Adoption of this proposed rule will not result in any economic or administrative costs to the public, but will grant to the petitioner or other persons an intangible economic benefit. This proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities, or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule, if issued as a final rule, will not have significant economic impact on a substantial number of small entities.

#### Compliance With Executive Order 12291

It has been determined that this proposed rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Drafting Information

The principal author of this document is Charles N. Bacon, Research and Regulations Branch, 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

Accordingly, under the authority contained in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 as follows:

#### PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9 is amended by adding § 9.59 as follows:

\* \* \* \* \*

#### Subpart C—Approved American Viticultural Areas

\* \* \* \* \*

#### 9.59 Arroyo Seco.

Par. 2. Subpart C is amended by adding § 9.59. As added, § 9.59 reads as follows:

#### § 9.59 Arroyo Seco.

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

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Arroyo Seco viticultural area are four U.S.G.S. quadrangle maps. They are entitled:

(1) "Greenfield, Cal.", 7.5 minute series, edition of 1956;

(2) "Paraiso Springs, Cal.", 7.5 minute series, edition of 1956;

(3) "Soledad, Cal.", 7.5 minute series, edition of 1955; and

(4) "Sycamore Flat, Cal.", 7.5 minute series, edition of 1956 (photinspected 1972).

(c) *Boundaries.* The Arroyo Seco viticultural area is located within Monterey County, California. The beginning point is found on the "Sycamore Flat, California," U.S.G.S. map at the junction of Arroyo Seco Road and the Carmel Vally Road (indicated as the Jamesburg Road on the map).

(1) Then east following Arroyo Seco Road to the Southwest corner of Section 22, T. 19 S., R. 5 E.

(2) Then east following the southern boundaries of Sections 22, 23, 24, 19, and 20 to the southeastern corner of Section 20, T. 19 S., R. 6 E.

(3) Then northeast in a straight line for approximately 1.3 miles to the summit of Pettits Peak.

(4) Then northeast in a straight line for approximately 1.8 miles to the point where the 400' contour line intersects the northern boundary of Section 14, T. 19 S., R. 6 E.

(5) Then east following the 400' contour line to a point immediately west of the Reservoir within the Posa de los Ositos Land Grant.

(6) Then following the ridge line in a northeasterly direction for approximately 7.5 miles to U.S. Highway 101 at the intersection of Underwood Road.

(7) Then east following Underwood Road to its intersection with the Posa de los Ositos Land Grant boundary.

(8) Then north following the Posa de los Ositos land Grant boundary to the west bank of the Salinas River.

(9) Then northwest following the west bank of the Salinas River to its intersection with the southern boundary of Section 17, T. 18 S., R. 7 E.

(10) Then due west for approximately 2.0 miles following the southern boundary of Section 17, and continuing to U.S. Highway 101.

(11) Then following U.S. Highway 101 in a northwesterly direction to its intersection with Paraiso Road.

(12) Then south following Paraiso Road to the intersection with Clark Road.

(13) Then south in a straight line for approximately 1.8 miles to the northeast corner of section 5, T. 19 S., R. 6 E.

(14) Then due south following the eastern boundaries of Sections 5, 8, and 17, to the intersection with Arroyo Seco Road.

(15) Then southwest in a straight line for approximately 1.0 mile to Bench Mark 673.

(16) Then west in a straight line for approximately 1.8 miles to Bench Mark 649.

(17) Then northwest in a straight line for approximately 0.2 mile to the northeast corner of Section 23, T. 19 S., R. 5 E.

(18) Then west following the northern boundaries of Sections 23 and 22 to the northwest corner of Section 22, T. 19 S., R. 5 E.

(19) Then south in a straight line for approximately 1.0 mile to the point of beginning.

Signed: September 8, 1982.

Stephen E. Higgins,  
*Acting Director.*

Approved: October 6, 1982.

David Q. Bates,  
*Deputy Assistant Secretary (Operations).*

[FR Doc. 82-30177 Filed 11-2-82; 8:45 am]

BILLING CODE 4810-31-M

## 27 CFR Part 9

[Notice No. 430]

### Linganore Viticultural Area; Proposed Establishment

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area encompassing parts of Frederick and Carroll Counties in north central Maryland to be known as "Linganore." This proposal is the result of a petition submitted by Mr. John (Jack) T. Aellen, Jr., proprietor of a bonded winery in the area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will allow wineries to better designate the specific grape-growing area where their wines come from and will enable consumers to better identify the wines they purchase.

**DATE:** Written comments must be received by December 3, 1982.

**ADDRESSES:** Send written comments or requests for a public hearing to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044-0385, (Attn: Notice No. 430).

Copies of the petition, the proposed regulations, maps with the boundaries of the proposed viticultural area marked, and any written comments will be available for public inspection during normal business hours at the: ATF Reading Room, Office of Public Affairs

and Disclosure, Room 4405, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Jim Whitley, Specialist, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, N.W., Washington, DC 20226 (202-566-7626).

### SUPPLEMENTARY INFORMATION:

#### Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. The revised regulations permit the establishment of definite viticultural areas and also 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 amended Title 27, CFR, by adding a new Part 9 entitled "American Viticultural Areas." This part lists all approved American viticultural areas which may be used on wine labels and in wine advertisements as appellations of origin.

Section 4.24a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. 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 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;

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

(d) A description of the specific boundaries of the viticultural area, based on the features which can be found on the 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. maps with the boundaries prominently marked.

#### Petition

ATF has received a petition proposing an area located in north central Maryland and encompassing parts of Frederick and Carroll Counties as