

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

§§ 7.367(a)-1 and 7.367-2 [Removed]

Par. 2. Sections 7.367(a)-1 and 7.367-2 are removed.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. Section 301.7477-1 is amended by revising paragraph (a)(3) and the last sentence of paragraph (b)(2) to read as follows:

§ 301.7477-1 **Declaratory judgments relating to transfers of property from the United States.**

(a) *Petition*—* * *

(3) *Beginning of exchange.* An exchange generally shall be considered to begin upon the beginning of the first transfer of property pursuant to the plan under which the exchange is to be made. For rules determining the beginning of a transfer, see § 1.367(a)-1(c)(4).

(b) *Judgment*—* * *

(2) *Exhaustion of administrative remedies.* * * * In no event shall the Internal Revenue Service be deemed to have had a reasonable time to act if a failure to act has occurred because the petitioner did not proceed with due diligence or because the petitioner has not provided all available information or materials reasonably requested by the Internal Revenue Service.

This Treasury decision is issued under the authority contained in sections 367(a)(1) (90 Stat. 1634, 26 U.S.C. 367(a)(1)) and 7805 (68A Stat. 917, 26 U.S.C. 7805) of the Internal Revenue Code of 1954. Approved by the Office of Management and Budget under control number 1545-0719.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: April 20, 1984.

John E. Chapoton,
Assistant Secretary of the Treasury.

[FR Doc. 84-12374 Filed 5-7-84; 8:45 am]

BILLING CODE 4330-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-174 RE: Notice No. 490]

Clear Lake Viticultural Area

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

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area located within southwest Lake County, California, known as "Clear Lake." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of "Clear Lake" as a viticultural area and subsequent use as an appellation of origin on wine labels and advertisements will allow wineries to better designate the specific grape-growing areas where their wines come from and will enable wine consumers to better identify the wine they purchase.

EFFECTIVE DATE: June 7, 1984.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, Specialist, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC, (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. These regulations allow for the establishment of definite viticultural areas. The 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.

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, the names of which may be used as appellations of origin.

Section 4.25a(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 procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Petition for Clear Lake

ATF was petitioned by three of the grape-growers and winery owners located in an area surrounding the watershed of Clear Lake in southwestern Lake County, California. The viticultural area is known as "Clear Lake."

The viticultural area is located entirely within Lake County between the Mayacamas Mountains to the southwest and the Mendocino National Forest to the northeast. It extends to the southeast to just north of the "Guenoc Valley" viticultural area which is also located in Lake County. The "Clear Lake" viticultural area is located entirely

within the boundaries of a larger viticultural area known as "North Coast."

The area encompassed by the boundaries consists of 168,960 acres or 264 square miles of valley and upland terrain surrounding Clear Lake. Prominent among the growing areas contiguous to Clear Lake, and which fall within the viticultural area designation, are Big Valley, Scotts Valley, Upper Lake, Clearlake Oaks and Lower Lake.

Evidence provided by the petitioners states that there are over 3,000 acres planted to vines, and the viticultural area now has three commercial wineries, two located in the Big Valley area, a third in Lower Lake, and others being planned.

In response to this petition ATF published a notice of proposed rulemaking, No. 490 in the Federal Register on October 20, 1983, (48 FR 48685) proposing the establishment of the "Clear Lake" viticultural area.

Historical or Current Evidence of Boundaries

The boundaries of the "Clear Lake" viticultural area are historically defined as those valley and upland terrain areas that surround Clear Lake. Clear Lake is a large natural fresh water lake that is centrally located in the viticultural area. The "Clear Lake" viticultural area is rimmed by steep surrounding mountains ranging in elevation to over 4,000 feet above sea level. The Clear Lake region has been known as a popular resort area and agricultural center since it was first settled in the Nineteenth Century. In recent years there has been a significant return of vineyard development found within the boundaries of the "Clear Lake" viticultural area.

The boundaries of the viticultural area may be found on four (4) U.S.G.S. quadrangle (Topographic) maps, 15 minute series, scale 1:62,500—Lower Lake, Clearlake Oaks, Lakeport and Kelseyville. The specific boundaries for the viticultural area are detailed in the regulation portion of this document at 27 CFR 9.99(c) which immediately follows in the preamble to this final rule.

After carefully considering the boundaries and supporting evidence submitted, ATF is adopting the "Clear Lake" viticultural area boundaries stated in the notice of proposed rulemaking and found in this final rule.

Geographical Features

The petitioner claimed and ATF agrees that the "Clear Lake" viticultural area is distinguished from the surrounding areas on the basis of elevation, watershed and climate. The

petitioner based these claims on the following evidence that has been verified by ATF:

(a) *Elevation.* The Mendocino National Forest on the northeastern boundary and the Mayacamas Mountain Range on the southwestern boundary geographically isolate the Clear Lake area from surrounding areas. Both of these mountain areas have heavily forested rugged terrains. In addition, because it is Federally controlled land, the Mendocino National Forest is unavailable for cultivation. The viticultural area is rimmed by steep surrounding mountains ranging in heights to over 4,000 feet. The prominent inactive volcanic mountain, Mt. Konociti (elevation 4,300 feet) rises from the western edge of Clear Lake and dominates the countryside. The lake itself, which is centrally located within the viticultural area is 1,300 feet above sea level and the largest natural body of fresh water in California (70.5 square miles). Because of its size and location, Clear Lake has a demonstrable influence on the grape-growing areas immediately surrounding it.

The 3,000 acres currently planted around the lake are located at altitudes of 1,300 to 1,800 feet. In comparison, the vineyard areas of Mendocino County located to the west of Clear Lake have average altitudes of less than 700 feet. The vineyard areas of Napa and Sonoma Counties located to the south of Clear Lake are less than 100 feet in altitude.

(b) *Climate and Watershed.* The Clear Lake viticultural area is close enough to the Pacific Ocean to be influenced by the maritime coastal air that flows through the gaps in the mountains located to the west. The coastal air flows gently across Clear Lake, cooling the area surrounding it in the summer. This coastal air does not penetrate the high mountains to the east of Clear Lake. On the east side of that mountain area the climate is much warmer, with little air flow.

The Clear Lake viticultural area has a unique climate pattern, different than the other north coastal areas. The feature distinguishing Clear Lake from the surrounding areas is the unique influence of the Clear Lake watershed. Clear Lake serves to moderate the temperatures in the viticultural area throughout the year by creating both a favorable warming temperature influence in the winter and a cooling influence in the summer.

Clear Lake's cold nights offset the daytime heat which makes the viticultural area uniformly cooler than anywhere else in the surrounding north coastal counties. Also, the absence of

wind and fog conditions makes the Clear Lake viticultural area different from the surrounding areas.

According to the publication entitled "Climatography of the United States No. 81-4, Decennial Census of U.S. Climate," the growing season in Clear Lake is 223 days which is shorter than the surrounding areas.

The average rainfall per year for the Clear Lake area is about 37 inches. The average rainfall at the Middletown area of Lake County located to the south of the proposed viticultural area is about 62 inches per year. The adjacent counties of Sonoma and Mendocino have rainfalls averaging 32 and 39 inches per year, respectively.

Viticultural Area Name

The petitioner claimed and ATF agrees that the viticultural area is locally and nationally known by the name "Clear Lake." The petitioner based this claim on the following evidence that has been verified by ATF:

(a) Clear Lake, the largest natural fresh water lake located entirely within the boundaries of California, identifies the principal inhabited region of Lake County. For over a century the Clear Lake region has been a popular resort and agricultural center.

(b) Mr. Ernest P. Penninov the author of "A History of the Lake County Early Grape and Wine Industry," documented events about the people that first settled around the Clear Lake area and their relationship to the development of the local wine industry. He said, that in 1865 a group of San Francisco entrepreneurs organized the Clear Lake Water Company with the purpose of impounding water from Clear Lake for use in San Francisco.

(c) By the turn of the century newspaper stories of the period told of groups of people ferrying around Clear Lake stopping at various wineries for drinks.

(d) Several wineries that have been selling wines on a local and national level have used the name Clear Lake on their bottle labels to further identify their products.

(e) Some localities within the viticultural area that use the name Clear Lake in their heritage are Clearlake Oaks, Clearlake Park, Clearlake Highlands and Clear Lake State Park. United States Geographical Survey maps document this information.

No Comments Received

The notice of proposed rulemaking, Notice No. 490, contained a 45 day comment period. In it, ATF invited comments from interested parties regarding two issues.

The first issue dealt with historical or current evidence as to whether the viticultural area boundaries are as specified in the petition.

The second issue that ATF requested comments from the public on, dealt with alternative boundaries. Comments were invited on data concerning the geographical and viticultural characteristics which distinguish the viticultural area from the surrounding areas.

No comments were received during the comment period regarding either of these two issues.

Having analyzed and evaluated all of the information submitted, ATF is adopting the "Clear Lake" viticultural area as proposed.

Miscellaneous

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

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 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 proposed.

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 final rule because it will not have a significant economic impact on a substantial number of small entities. This final rule will allow the petitioners and other persons to use an appellation of origin, "Clear Lake," on wine labels and in wine advertising. ATF has determined that this final rule neither imposes new requirements on the public nor removes privileges available to the public. This final rule 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 final rule will not have a significant economic impact on a substantial number of small entities.

Compliance With Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in—

(a) An annual effect on the economy of \$100 million or more;

(b) A major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Disclosure

A copy of the petition and supporting documents are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4407, Office of Public Affairs and Disclosure, 12th and Pennsylvania Ave., NW, Washington, DC 20226.

Drafting Information

The principal author of this document is Edward A. Reisman, Specialist, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority

Accordingly, under the authority in 27 U.S.C. 205 (49 Stat. 981, as amended), the Director is amending 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.99 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.	
* * * * *	
9.99	Clear Lake
* * * * *	

Par. 2. Subpart C is amended by adding § 9.99 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.99 Clear Lake.

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

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Clear Lake viticultural area are four U.S.G.S. maps. The maps are titled as follows:

- (1) "Lower Lake Quadrangle, California," 15 minute series, 1958;
- (2) "Clearlake Oaks Quadrangle, California," 15 minute series, 1960;
- (3) "Lakeport Quadrangle, California," 15 minute series, 1958;
- (4) "Kelseyville Quadrangle, California," 15 minute series, 1959.

(c) *Boundaries.* The Clear Lake viticultural area is located in southwestern Lake County, California. The descriptive boundaries of the viticultural area, using landmarks and points of reference on the applicable U.S.G.S. maps, are as follows:

Lower Lake Quadrangle Map (15 minute series); From the beginning point on Mt. Hannah in Section 16, Township 12 North (T12N), Range 8 West (R8W), identified as having an elevation of 3,978 feet, the boundary runs—

(1) East-southeasterly in a straight line to the point on Seigler Mountain in Section 23, T12N/R8W, identified as having an elevation of 3,692 feet;

(2) Then east-southeasterly in a straight line to the point on Childers Peak in Section 34, T12N/R7W, identified as having an elevation of 2,188 feet;

(3) Then east-northeasterly in a straight line to the point on the southeast corner of Section 25, T12N/R7W;

(4) Then northeasterly in a straight line to the point in Section 16, T12N/R8W, identified as being the "Baker Mine;"

(5) Then northwesterly in a straight line to the point at the southeast corner of Section 23, T13N/R7W;

(6) Then northerly along the east line of Sections 23, 14, 11, and 2, to the point at the northeast corner of Section 2, T13N/R7W, on the Clearlake Oaks Quadrangle map;

Clearlake Oaks Quadrangle Map (15 minute series); Continuing from the northeast corner of Section 2, T13N/R7W—

(7) Then northwesterly in a straight line to the point in Section 21, T14N/R7W, at the top of Round Mountain

(8) Then northwesterly in a straight line to the southeast corner of Section 4, T14N/R8W;

Lakeport Quadrangle Map (15 minute series); Continuing from the southeast corner of Section 4, T14N/R8W, on the Clearlake Oaks Quadrangle Map—

(9) Then northwesterly on the Lakeport Quadrangle in a straight line to a point on Charlie Alley Peak in Section 28, T16N/R9W, identified as having an elevation of 3,482 feet;

(10) Then westerly in a straight line to a point on Hells Peak in Section 29, T16N/R10W, identified as having an elevation of 2,325 feet;

(11) The southeasterly in a straight line to a point on Griner Peak in Section 23, T15N/R10W, identified as having an elevation of 2,132 feet;

(12) Then southwesterly in a straight line to a point on Scotts Mountain in Section 8, T14N/R10W, identified as having an elevation of 2,380 feet;

(13) Then southeasterly in a straight line to a point on Lakeport Peak in Section 35, T14N/R10W, identified as having an elevation of 2,180 feet;

Kelseyville Quadrangle Map (15 minute series); Continuing from Lakeport Peak in Section 35, T14N/R10W, on the Lakeport Quadrangle Map—

(14) Then southeasterly in a straight line to the point at the southwest corner of Section 1, T13N/R10W;

(15) Then south by southeast in a straight line to the point at the southeast corner of Section 36, T13N/R10W;

(16) Then south by southeasterly in a straight line to the point at the southwest corner of Section 18, T12N/R8W;

(17) Then east by northeast in a straight line to the beginning point at Mount Hannah, Section 16, T12N/R8W, on the Lower Lake Quadrangle Map.

Signed: April 11, 1984.

Stephen E. Higgins,
Director.

Approved: April 30, 1984.

Edward T. Stevenson,
Deputy Assistant Secretary (Operations).

[FR Doc. 84-12337 Filed 5-7-84; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Approval of Permanent Program Amendments From the State of Missouri Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments to the Missouri permanent regulatory program (hereinafter referred to as the Missouri program) under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On April 13, 1983, the State of Missouri submitted to OSM revised statutory and regulatory performance bond and enforcement provisions as program amendments.