

(2) The term "registered equity security" shall mean any equity security which is (i) registered pursuant to section 12(b) or 12(g) of the Act, (ii) issued by an insurance company meeting the conditions of section 12(g)(2)(G) of the Act, (iii) registered under the Securities Act of 1933 and issued by a closed-end investment management company registered under section 8 of the Investment Company Act of 1940, or (iv) an American Depositary Receipt issued against the equity securities of a foreign issuer if such equity securities are registered pursuant to section 12 of the Act.

(b) *Designation criteria.* (1) Any NASDAQ security which on the most recent qualification date meets each of the criteria set forth in paragraph (b)(4)(i) of this section ("Tier 1 Criteria") is hereby designated as a national market system security, such designation to be effective, pursuant to the terms of an effective designation plan, not later than the thirty-fifth business day following such qualification date.

(2) Any NASDAQ security not described in paragraph (b)(1) of this section which

(1) substantially meets the criteria set forth in paragraph (b)(4)(ii) or (b)(4)(iii) of this section ("Tier 2 Criteria");

(ii) is a right to purchase a security described in paragraph (b)(1) or (b)(2)(i) of this section; or

(iii) is a warrant to subscribe to a security described in paragraph (b)(1) or (b)(2)(i) of this section and meets the criteria set forth in paragraph (b)(4)(iv) of this section ("Warrants") shall be designated as national market system securities upon application of the issuer in accordance with the terms of an effective designation plan.

(4)(i) *Tier 1 criteria.* * * *

(B) There are at least 500,000 shares held by persons other than directors, or persons owning of record or beneficially 10 percent or more of the outstanding shares of the security ("publicly held shares").

(D) The price per share on each of the five business days preceding the most recent qualification date is \$10 or more

(F) At least four dealers act as NASDAQ market makers with respect to the security on each of the five business days preceding the most recent qualification date.

(ii) *Tier 2 criteria—Alternative 1.*

(A) The issuer of the security has net tangible assets of at least \$4,000,000.

(B) There are at least 400,000 publicly-held shares.

(D) The price per share on each of the five business days prior to the date of application by the issuer is \$5 or more.

(E) The dollar value of shares traded during the 12 month period preceding the date of application by the issuer is at least \$100,000.

(F) At least four dealers act as NASDAQ market makers with respect to the security on each of the five business days preceding the date of application by the issuer.

(G) The issuer of the security has had annual net income of at least \$400,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

(iii) *Tier 2 criteria—Alternative 2.*

(A) The issuer of the security has net tangible assets of at least \$12,000,000.

(B) There are at least 1,000,000 publicly-held shares.

(C) The market value of publicly held shares is at least \$10,000,000.

(D) The dollar value of shares traded during the 12 months preceding the date of application by issuer is at least \$1,000,000.

(E) At least four dealers act as NASDAQ market makers with respect to the security on each of the five business days preceding the date of application by the issuer.

(F) The issuer has a five year operating history.

(iv) *Warrants.*

(A) The Warrants substantially meet the Tier 2 criteria; *provided, however* that they shall not be required to meet the criteria set forth in paragraphs (b)(4)(ii)(B) or (b)(4)(iii)(B) of this section.

(B) Immediately after the distribution there are at least 450,000 Warrants outstanding;

Instructions. 1. The computations required by (i)(A), (ii)(A) and (iii)(A) shall be taken from the issuer's most recent financial information filed with the Commission pursuant to section 12 or 13 of the Act. * * * 4. In the case of American Depositary Receipts, the computations required by (i)(A), (ii)(A), (ii)(G), (iii)(A) and (iii)(F) shall relate to the foreign issuer and not to any depository or any other person deemed to be an issuer for purposes of Form S-12 under the Securities Act of 1933 (§ 239.19).

George A. Fitzsimmons,
Secretary.

October 1, 1981.

Regulatory Flexibility Act Certification

I, John Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed

amendments to Rule 11Aa2-1 set forth in Securities Exchange Act Release No. 18131, if promulgated, will not have a significant economic impact on a substantial number of small issuers, small broker-dealers or any other broker-dealers. Specifically, broker-dealers will report transactions through the NASDAQ terminals they have already have, and, at most, the requirement will entail minimal additional clerical costs.

John S. R. Shad,

Chairman.

October 2, 1981.

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BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 385; Ref: Notice No. 356]

Finger Lakes Viticultural Area

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes amended boundaries for the previously proposed Finger Lakes viticultural area, Notice No. 356, 45 FR 73694. Based on testimony received at the public hearing held on the proposed Finger Lakes viticultural area, the Bureau of Alcohol, Tobacco and Firearms (ATF) believes the boundaries originally proposed are too broad to accurately reflect a grape-growing area distinguished from the surrounding areas by viticulturally significant geographic features. This notice proposes amended boundaries which ATF believes reflect such a distinctive area.

DATE: Written comments must be received by January 5, 1981.

ADDRESS: Send written comments to Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044, (Attn: Notice No. 385).

Copies of the petition, the Notice of Proposed Rulemaking (No. 356), the appropriate maps, all written comments, and the hearing transcript are available for public inspection during normal business hours at: ATF Reading Room, Room 4407, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue, NW., Washington, D.C.

A copy of the hearing transcript is also available for public inspection during normal business hours at: Buffalo Area Office, Bureau of Alcohol, Tobacco and Firearms, Federal Building, Room

219, 111 West Huron Street, Buffalo, New York.

The hearing transcript may be obtained through the office of the hearing reporter: Lisa Clark, Tiro Reporting Services, 536 Executive Office Building, 36 West Main Street, Rochester, New York 14614.

FOR FURTHER INFORMATION CONTACT: Norman P. Blake, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

ATF was petitioned by the Finger Lakes Wine Growers Association to establish a viticultural area to be named "Finger Lakes." The proposed area is located in the west central part of New York State and encompasses 14 adjoining counties in their entirety. The petitioner stated that "the prominent geological features that outline the area so closely approximate these political boundaries; it is felt that these political boundaries best define the Finger Lakes area to the public."

ATF issued a notice of proposed rulemaking concerning Finger Lakes. This notice, No. 356, published November 6, 1980, in the Federal Register (45 FR 73694), proposed the establishment of Finger Lakes as a viticultural area with boundaries recommended by the petitioner. The proposed area included approximately 8,400 square miles with climatic conditions which varied by more than 60 days in the length of the growing season. At a public hearing and in the notice of proposed rulemaking, ATF sought to obtain information to more clearly define the current and prospective grape-growing areas. In addition, at the public hearing, information was sought as to which geographical features or conditions were the predominating factors in grape growing in the proposed area.

Public Hearing

A public hearing concerning the establishment of Finger Lakes as a viticultural area was held in Geneva, New York, on February 11, 1981. The witnesses giving testimony at the hearing all supported the boundaries of the Finger Lakes viticultural area as proposed.

The witnesses generally based their decision for the proposed boundaries on the historical significance of the name Finger Lakes and the fact that the State of New York officially designated the proposed 14-county area as the Finger Lakes Region. A witness explained that

New York State is divided into vacation regions for recreational and tourism purposes. Witnesses further stated that the predominate geographical features which make the proposed area unique from the surrounding area are the 11 finger-shaped lakes and their climatic effects.

Many witnesses were questioned as to why the entire 14-county area was endorsed, when more than 98 percent of the grapes are grown in less than one-half of the counties. Questions were also asked about the location of the vineyards in the counties where grapes are grown. ATF sought further information as to the economical and commercial feasibility of grape growing in areas where grapes are not presently grown, particularly in areas relatively far from the lakes and subject to a comparatively short growing season.

In response to questions concerning the general location of the vineyards within the proposed area, testimony was given which placed the vineyards between or in the immediate vicinity of some of the Finger Lakes. Further, the petitioner stated with regard to the variation in the length of the growing season in the proposed area, "I think that the 143 days really define the boundaries. Once you get outside those boundaries as I understand it, you are getting into the possibility of not being too viable commercially. * * * I'm not saying that it's the best temperature. I'm saying that I believe once you get outside that area, you run into difficulty."

Other testimony was given which pointed out that the location of a vineyard, in many cases, was dictated by its proximity to a winery. As the number of wineries increases and expands away from the traditional winery areas, the number of vineyards will likewise expand. As evidence of the winery and vineyard expansion, testimony was given regarding growth since the enactment in New York of the Farm Winery Bill of 1976. ATF has learned that within the proposed area, 14 new wineries have been established, and throughout the State 29 new wineries have been established since June 1976. Many new wineries in the proposed area are located where none previously existed. These new wineries are generally located between two of the Finger Lakes, where the growing season is approximately 150 days.

After evaluating all the material regarding the proposed Finger Lakes viticultural area, ATF believes the proposed boundaries should be amended. The amended boundaries should more clearly define a distinct grape-growing area with geographic and

climatic characteristics that distinguish the viticultural features of the proposed area from surrounding areas. ATF is proposing amended boundaries (1) which encompass an area with a relatively uniform growing-season length and (2) which include, and are proximate to, the 11 Finger Lakes. The petitioner submitted evidence that the lakes have a moderating effect on the climate, particularly that the winter climate in the area close to the lakes is less severe than in surrounding areas. With the amended boundaries, ATF believes the area would qualify as a viticultural area.

Amended Boundaries

The amended boundaries of the proposed Finger Lakes viticultural area, using landmarks and points of reference found on the U.S.G.S. maps submitted with the petition, are as follows: starting at the most northwest point, the intersection of the Erie Canal and the north/south Conrail line south of the City of Rochester, east along the course of the Erie Canal approximately 56 miles (45 miles due east) to the intersection of New York State Highway 89 (NY-89); south on NY-89 four miles to the intersection of highway US-20; east on US-20 for 36 miles to the intersection of Interstate 81 (I-81); south along I-81 for ten miles to NY-281; continuing south on NY-281 for 20 miles around the western city limits of Cortland where NY-281 becomes NY-13; continuing southwest on NY-13 (through the cities of Dryden and Ithaca) approximately 38 miles to the intersection of NY-224; from this point continue due west one mile to the southern boundary of Schuyler County, continuing west along this county line 20 miles to the community of Meads Creek; north along the Schuyler-Steuben county line four miles to the major east/west power line; west along the power line for eight miles to the intersection of NY-17 (four miles southeast of the community of Bath); northwest on NY-17 approximately nine miles to the intersection of I-390; northwest along I-390 for 21 miles to the intersection of NY-36; north two miles through the community of Dansville to NY-63; northwest on NY-63 approximately 18 miles to the intersection of NY-39, just south of Genesee; north on NY-39 nine miles to the intersection where the west and north/south Conrail lines meet at the community of Avon; north along the north/south Conrail line for 15 miles to the beginning point at the intersection of the Erie Canal.

Since the amended boundaries significantly change the boundaries as

initially proposed, ATF believes public comment should be solicited.

Executive Order 12291

It has been determined that this proposed regulation 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.

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 the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The 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 the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Public Participation

ATF requests comment from all interested persons concerning the amended proposed boundaries. Furthermore, while this notice proposes alternative boundaries for the Finger Lakes viticultural area, suggestions for other possible boundaries will be given consideration before a final decision is made.

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 action.

ATF will not recognize any material and comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential

or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting comments is not exempt from disclosure.

Since this notice pertains specifically to amending the boundaries and evidence on this and other aspects of the Finger Lakes viticultural area was gathered at the hearing, no further hearings are scheduled or are expected to be scheduled concerning this viticultural area.

Drafting Information

The principal author of this document is Norman P. Blake, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices participated in the preparation of this document, both in matters of substance and style.

Authority

Accordingly, the Director is issuing this notice of proposed rulemaking under the authority contained in Section 5 of the Federal Alcohol Administration Act.

(49 Stat 981, as amended; 27 U.S.C. 205)

Signed: July 29, 1981.

G. R. Dickerson,
Director.

Approved: September 1, 1981.

John P. Simpson,
Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 81-29039 Filed 10-6-81; 8:45 am]

BILLING CODE 4810-31-M

27 CFR Part 9

[Notice No. 387; Ref: Notice No. 352]

Lime Kiln Valley Viticultural Area

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

ACTION: Notice of proposed rulemaking.

SUMMARY: At a public hearing held on the proposed viticultural area, testimony was given which indicated that the boundaries originally proposed do not accurately reflect a distinct grape-growing area. One of the necessary elements in establishing a viticultural area is evidence relating to its geographical features, e.g. climate, which distinguish the features of the proposed area from surrounding areas. In our view, the disparity in the average rainfall in the proposed area and its likely effect on the grapes grown in the region fails to adequately distinguish the proposed area from surrounding areas. Moreover, this climatic feature does not delimit a distinct viticultural area.

Therefore, the Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing this notice of proposed rulemaking to amend the boundaries to reflect such a distinctive area.

DATES: Written comments must be received by December 7, 1981.

ADDRESSES: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044. (Notice No. 387).

Copies of the petition, the proposed regulations in Notice No. 352 and this notice, the appropriate maps, the written comments, and a copy of the hearing proceedings are available for public inspection during normal business hours at: ATF Reading Room, Room 4407, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue, NW, Washington, DC.

A copy of the hearing proceedings is available for public inspection during normal business hours at: The Office of the Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, 34th Floor, 525 Market Street, San Francisco, California.

FOR FURTHER INFORMATION CONTACT:

Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

ATF was petitioned by Enz Vineyards of Hollister, California, to establish a viticultural area in San Benito County to be named "Lime Kiln Valley." The petitioner, in describing the climatic characteristics of the proposed area, stated that the western end of the proposed area, which is mountainous, received an average of 40 inches of rainfall per year, while the eastern end, being the valley floor, received an average of 16 inches a year.

Subsequently, ATF issued Notice No. 352, published in the Federal Register on October 27, 1980 (45 FR 70913), proposing the establishment of Lime Kiln Valley as a viticultural area. The boundaries of the proposed area were described by summits of peaks and generally followed the area's watershed boundary.

Public Hearing

A public hearing concerning the establishment of Lime Kiln Valley was held in Hollister, California, on January 21, 1981. The testimony at the hearing supported the establishment of a viticultural area, but a problem arose