

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

(T.D. ATF-193; Reference Notice No. 477)

Martha's Vineyard Viticultural Area

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

ACTION: Final rule.

SUMMARY: This rule establishes a viticultural area located in Massachusetts known as "Martha's Vineyard." This final rule is the result of a petition submitted by Mr. George Mathiesen, of Chicama Vineyards, West Tisbury, Massachusetts.

The Bureau of Alcohol, Tobacco and Firearms believes the establishment of Martha's Vineyard as a viticultural area and its subsequent use as an appellation of origin in wine labeling and advertising will allow wineries to designate their specific grape-growing areas and will help consumers identify the wines they purchase.

EFFECTIVE DATE: February 4, 1985.

FOR FURTHER INFORMATION CONTACT:

Charles N. Bacon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 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. Under 27 CFR 4.25a(e)(2), any interested person may petition ATF to establish a grape-growing region as an American viticultural area. Approved American viticultural areas are listed in 27 CFR Part 9.

Petition for Martha's Vineyard. Mr. George Mathiesen, co-owner of Chicama Vineyards, West Tisbury, Massachusetts, submitted a petition for the establishment of a viticultural area known as "Martha's Vineyard." This viticultural area consists of the island of Martha's Vineyard (including Chappaquiddic Island) in Dukes County, Massachusetts.

In response to this petition, ATF proposed the Martha's Vineyard viticultural area in Notice No. 477 on

August 4, 1983 (48 FR 35462). In that notice, ATF solicited comments concerning the proposed viticultural area. Notice No. 477 also proposed a "Southeastern New England" viticultural area which was adopted by T.D. ATF-169, March 28, 1984 (49 FR 11829).

Comments. Nine respondents submitted comments on the proposed Martha's Vineyard viticultural area. The Martha's Vineyard Airport Commission supported the proposed viticultural area.

The other eight respondents objected to the proposed Martha's Vineyard viticultural area on the basis of its name. These respondents included Thomas May, owner of a Napa Valley, California vineyard named "Martha's Vineyard," the Heitz Wine Cellars, St. Helena California, five other Napa Valley wineries, and Bob Thompson of St. Helena, a wine consumer.

On the basis of the evidence contained in the original petition, ATF is adopting the "Martha's Vineyard" viticultural area as proposed in Notice No. 477. The evidence presented in the petition, and the discussion of the name is outlined below.

Name

Petition. The name "Martha's Vineyard" was well documented in the petition as referring to the viticultural area. This name was given to the island in 1602 by Bartholemew Gosnold, an agent for Sir Walter Raleigh. In succeeding years, the island was referred to as Martha's or Martin's Vineyard. By 1640 after the first permanent settlement on the island, the name was firmly established as Martha's Vineyard. Today, Martha's Vineyard is a well known resort area, and all references to the island are to Martha's Vineyard.

Written comments. The name "Martha's Vineyard" proved to be controversial. According to his written comment, Thomas May purchased a vineyard in Napa Valley in 1963 and named it "Martha's Vineyard" in honor of his wife. This vineyard is now 40 acres in size and produces Cabernet Sauvignon grapes which are sold to Heitz Wine Cellars, St. Helena, California. Heitz produces and bottles Cabernet Sauvignon wine from these grapes and labels it "Napa Valley" with the additional vineyard designation "Martha's Vineyard."

According to the written comments, this wine is of exceptional quality and is generally known as, and referred to as Heitz "Martha's Vineyard" Cabernet Sauvignon. Heitz stated their "Martha's Vineyard" label is well known nationally and internationally.

Mr. Thomas May, vineyard owner, and Heitz Wine Cellars argued against the establishment of a Martha's Vineyard viticultural area in Massachusetts for the following reasons:

1. It would violate Heitz common law right as an owner of the trademark and trade name "Martha's Vineyard."
2. Establishment of the viticultural area would deprive Heitz, as a trade name owner, to use its established trade name "Martha's Vineyard."
3. Establishment of the viticultural area would unfairly deprive Heitz of the goodwill and reputation built on the name "Martha's Vineyard," and this would result in serious economic detriment.
4. Establishment of the viticultural area would be deceptive and misleading to consumers who are familiar with "Martha's Vineyard" wine produced by Heitz.

As a result of these arguments, Heitz requested that ATF not establish a viticultural area known as "Martha's Vineyard." As an alternative, Heitz suggested the viticultural area could be established using some other name. This position was supported by several Napa Valley wineries in their comments, as well as by Bob Thompson, a wine consumer. Thompson stated that allowing another region to use the appellation "Martha's Vineyard" would dilute consumer understanding of the "Martha's Vineyard" wine produced by Heitz. He further stated that there is little evidence that the area in Massachusetts has any history of being viticulturally significant, and that it is premature to allow such a designation.

Conclusion. ATF has examined all of the written comments relating to the name "Martha's Vineyard," as well as Treasury Decision ATF-53 which established the present appellation of origin system. Several conclusions are evident concerning the name.

Martha's Vineyard in Massachusetts demonstrates clear historical precedent for the name. The island was named in 1602 and has been known by no other name since at least 1640. There is no evidence to show the name "Martha's Vineyard" does not apply to the island in Massachusetts. ATF, therefore, finds that the name Martha's Vineyard satisfies the criteria in 27 CFR 4.25a(e)(2)(i) requiring evidence that the name of the viticultural area be locally and/or nationally known as referring to the area specified in the application.

Treasury Decision ATF-53 did not recognize vineyard designations as appellations of origin; thus, Heitz "Martha's Vineyard" qualifies only as additional information permitted on

labels under 27 CFR 4.38(f). As additional information, "Martha's Vineyard" may continue to appear on labels for wine derived from grapes grown in a bona fide vineyard known by that name. However, "Martha's Vineyard" is not the appellation of origin on such wine labels and may not be used in lieu of an appellation when an appellation of origin is required. Only appellations of origin meeting the requirements of 27 CFR 4.25a may be used when appellations of origin are required to appear on wine labels.

ATF does not believe authorization of "Martha's Vineyard" as a viticultural area will result in consumer confusion or deception. Heitz "Martha's Vineyard" label is currently well known as referring to a single vineyard; moreover, all bottles using this label show an appellation of origin "Napa Valley" as authorized by 27 CFR 4.25a. Wine originating from the island of Martha's Vineyard may bear "Martha's Vineyard" as an appellation of origin. ATF believes that consumers are unlikely to be confused between wines bearing labels of "Napa Valley" and "Martha's Vineyard" as appellations of origin due to their wide geographic separation. For the same reason, ATF will not prohibit Heitz Wine Cellars from continuing to use "Martha's Vineyard" as a vineyard designation on their labels in conjunction with an appellation of origin.

Geographic Criteria

Climate. As an island, Martha's Vineyard is influenced by coastal winds blowing from all directions which moderates its climate. In the spring, winds travel over cool ocean waters causing a late island spring but protecting grapes from spring frost. In the fall, ocean winds influenced by warm water prolong the growing season. Consequently, the Martha's Vineyard growing season averages 210 days as compared to 180 days on the New England coast. Summer winds also keep grape vines dry preventing rot and mildew. In winter, snowfall is significantly less and rainfall greater than that of coastal New England.

No comments were addressed to the climate of Martha's Vineyard. ATF finds that the climate of Martha's Vineyard distinguishes it from surrounding areas.

Topography. Martha's Vineyard is an island surrounded on the north by Vineyard Sound, on the east by Nantucket Sound, and on the south and west by the Atlantic Ocean. The greatest length of the island from east to west is 19 miles, and greatest width about 9½ miles. Total size of Martha's

Vineyard is approximately 100 square miles, or 64,000 acres.

Geologically, Martha's Vineyard was formed by a glacial moraine. Soils are deep, well drained sand and sandy loam, some of which are in the rocky phase.

Boundaries

The boundaries of the viticultural area are the island of Martha's Vineyard including the area known as Chappaquiddic which is connected to Martha's Vineyard by a sandbar. It is shown as a separate island on some maps. No comments were addressed to the boundaries and they are adopted as proposed.

General Information

Although Martha's Vineyard is rich in native American grapes, grapes were not cultivated there until 1971.

At the present time there are 46 acres of bearing commercial vineyards on Martha's Vineyard. All grapes grown commercially are Vinifera varieties, primarily Chardonnay, White Riesling, Gewurztraminer, Cabernet Sauvignon, Pinot Noir, and Merlot. There is one bonded winery on the island.

Miscellaneous

ATF does not wish to give the impression that by approving Martha's Vineyard as a viticultural area, it is approving or endorsing the quality of the wine from the area. ATF is approving this area as being distinct and not better than other areas. By approving this area, 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 Martha's Vineyard wines.

Regulatory Flexibility Act

The notice of proposed rulemaking which resulted in this final rule contained a certification under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that if promulgated as a final rule, it would not have a significant impact on a substantial number of small entities. Therefore, the requirement contained in the Regulatory Flexibility Act (5 U.S.C. 603, 604) for a final regulatory flexibility analysis does not apply to this final rule.

Compliance With Executive Order 12291

It has been determined that this final 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.

List of Subjects in 27 CFR Part 9

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

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 imposed.

Drafting Information

The principal author of this document is Charles N. Bacon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

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

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of contents in 27 CFR Part 9 is amended by adding § 9.73 to read as follows:

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Sec.
9.73 Martha's Vineyard.
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Par. 2. Subpart C is amended by adding § 9.73 which reads as follows:

§ 9.73 Martha's Vineyard.

(a) *Name.* The name of the viticultural area described in this section is "Martha's Vineyard."

(b) *Approved maps.* The approved map for determining the boundary of the Martha's Vineyard viticultural area is the U.S.G.S. map, "Providence, R.I.; Mass.; Conn.; N.Y.;" scaled 1:250,000, edition of 1947 revised 1969.

(c) *Boundaries.* The Martha's Vineyard viticultural area is located entirely within Dukes County, Massachusetts. The boundary of the Martha's Vineyard viticultural area is the shoreline of the islands named "Martha's Vineyard" and "Chappaquiddic Island" on the "Providence" U.S.G.S. map, and the

viticultural area comprises the entire area of the islands.

Signed: October 23, 1984.

W. T. Drake,
Acting Director.

Approved: December 17, 1984.

Edward T. Stevenson,
Deputy Assistant Secretary (Operations),
[FR Doc. 85-68 Filed 1-2-85; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 762, 816 and 817

Suspension of Certain Regulations

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Notice of suspension.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is suspending certain portions of its regulations containing the definitions of fragile lands, historic lands, and adverse physical impact. OSM is also suspending portions of its regulations which contain the performance standards for the backfilling and grading of previously mined areas to the extent that they apply the concept of adverse physical impact in determining the required amount of highwall elimination. This action is being taken as a result of an agreement by the parties, approved in a December 3, 1984 District Court Order, withdrawing certain issues from consideration in Round III of the present litigation on OSM's permanent program regulations.

EFFECTIVE DATE: February 4, 1985. This suspension will be effective until final rules implementing the agreement are promulgated.

FOR FURTHER INFORMATION CONTACT: Brent Wahlquist, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, D.C. 20240; (202) 343-4264.

SUPPLEMENTARY INFORMATION:

I. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act), sets forth the general regulatory requirements governing surface coal mining operations and the surface impacts of underground coal mining. OSM has by regulation implemented or clarified many of the general requirements of the Act and established performance standards to be

achieved by different operations. 30 CFR Chapter VII. As part of that process, on September 14, 1983 (48 FR 41312) and September 16, 1983 (48 FR 41720) OSM promulgated final rules amending certain portions of its permanent regulatory program. In part, the regulations affected were: (1) Those in 30 CFR Part 762 which set forth the procedures for implementing the requirements of section 522 of the Act for designating lands unsuitable for all or certain types of surface coal mining operations; and, (2) those in 30 CFR Parts 701, 816 and 817, which set out the performance standards applicable to reining operations and, in particular, highwall reclamation.

These regulatory revisions were challenged in Round III of *In Re Permanent Surface Mining Litigation II*, Civil Action No. 79-1144 (D.D.C.). However, before that portion of the case had been decided, the court issued an Order on December 3, 1984 approving an agreement between the Plaintiff Citizen and Environmental Organizations and the Defendant Secretary of the Interior which withdrew from the litigation certain issues involving the regulations described below. A portion of that agreement called for the suspension of certain regulations within 30 days of the Order. This notice implements the agreement.

Fragile and Historic Lands

In revising the regulations having to do with section 522 of the Act, OSM changed the definitions of fragile lands and historic lands found at 30 CFR 762.5 (48 FR 41325). The revised definitions required a showing that irreparable or permanent damage could occur to lands by surface mining operations before such lands could be classified as either historic or fragile. The previous definitions at 30 CFR 762.5 (1982), simply required a showing that some damage could occur before such lands could be classified as either historic or fragile. Section 522(a)(3)(B) of the Act which is the statutory authority for this portion of the regulations requires a showing of possible "significant damage" before a designation of unsuitability may occur.

The settlement agreement calls for the suspension of the definitions of "fragile lands" and "historic lands" contained at 30 CFR 762.5 (1983). In compliance with the agreement, the phrase "beyond an operator's ability to repair or restore," which was added to the definitions in 1983, is suspended. This will mean that instead of requiring a showing of irreparable or permanent damage to the lands to allow for designation of an area

as unsuitable for mining, a showing of significant damage will be sufficient. Pursuant to the agreement, OSM will also propose a rule in the **Federal Register** amending 30 CFR 762.5 and will redefine "fragile lands" and "historic lands" to require only a showing of significant damage before such lands can be designated as unsuitable for mining pursuant to section 522 of the Act. Based on the public comment received, OSM will then promulgate an appropriate final rule.

Highwall Elimination in Remining Situations

On September 16, 1983 (48 FR 41720), OSM revised various performance standards pertaining to remining operations. OSM created a new definition of "adverse physical impact" at 30 CFR 701.5. Also, in 30 CFR 816.106(b) and 817.107(b) OSM incorporated the concept of adverse physical impact as a threshold requirement for reclamation of the highwall in remining operations. The effect of these changes was no longer to require the achievement of approximate original contour and complete elimination of preexisting highwalls in remining operations which did not cause or were not expected to cause an "adverse physical impact" on the pre-existing highwalls, even where there was reasonably available spoil to eliminate the highwalls in the immediate vicinity of the highwalls.

The settlement agreement requires OSM to suspend 30 CFR 816.106(b) and 817.106(b), and the definition of adverse physical impact at 30 CFR 701.5 insofar as they fail to require all persons conducting surface coal mining and reclamation operations to use all reasonably available spoil to backfill highwall(s) in all remining situations. This suspension will mean that the concept of adverse physical impact will no longer apply and all persons conducting remining operations will be required to use all reasonably available spoil in the immediate vicinity of the remining operation to backfill the highwall to the maximum extent technically practical. Pursuant to the agreement, OSM will also propose a rule in the **Federal Register** which will remove 30 CFR 816.106(b) and 817.106(b), and the definition of adverse physical impact at 30 CFR 701.5 from the Code of Federal Regulations.

In consideration of the foregoing, the following regulations in 30 CFR Parts 701, 762, 816 and 817 are suspended.