

Petition for Rulemaking on the Effect of Price Escalator Clauses; Docket No. RM84-13-001.

Petition for Rulemaking in the Matter of Reformation of Take-or-Pay Clauses; Docket No. RM84-17-001.

Order Granting Rehearing for Purposes of Further Consideration

(Issued February 4, 1987).

On January 5, 1987, certain applicants¹ filed for rehearing of Commission Order No. 459² pursuant to Rule 713 of the Commission's rules of practice and procedure.³ Order No. 459 terminated eighteen rulemaking dockets.

The Commission orders:

To have sufficient time to consider the issues raised in these applications the Commission grants rehearing of Order No. 459 solely for the purpose of further consideration. This order is effective on the date of issuances. This action does not constitute a grant or denial of any application on its merits, either in whole or part. As provided in § 385.713 of the Commission's rules of practice and procedure (18 CFR 385.713), no answers to these applications will be entertained by the Commission.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2636 Filed 2-6-87; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 619]

Ozark Highlands, South Central Missouri Viticultural Area; Establishment

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in south central Missouri, to be known as "Ozark Highlands." This proposal is the result of a petition submitted by the Ozark

Highland Vintners, an association of seven bonded wineries in the proposed area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will enable winemakers to label wines more precisely and will help consumers to better identify the wines they purchase.

COMMENT DATE: Written comments must be received by March 26, 1987.

ADDRESSES: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385, (Notice No. 619).

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226; (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 provide 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.

Part 9 of 27 CFR provides 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. 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, prepared by Mr. Laurence R. Carver of the Carver Wine Cellar and submitted on behalf of the Ozark Highland Vintners. The Ozark Highland Vintners is an association of seven Missouri wineries, of which the Carver Wine Cellar is one. The petition proposes establishment of a viticultural area to be known as "Ozark Highlands." All seven of the bonded wineries forming the Ozark Highland Vintners are located in the proposed area. An eighth winery in the area is not a member of that organization.

The proposed area includes portions of eleven Missouri counties, namely, Phelps, Maries, Osage, Gasconade, Franklin, Crawford, Texas, Shannon, Dent, Reynolds, and Pulaski. The area contains an estimated 2,000 square miles, within which there are approximately 500 acres planted to winegrapes. (Another 500 acres are in table grapes.) Grapes have been grown in the area since 1898, and commercial winemaking dates from 1930. The proposed area is entirely within the boundaries of the approved "Ozark Mountain" viticultural area.

Geography of the Area

According to the petition, the term "Ozark Highlands" refers specifically to the region formed by the undissected northern uplands of the Ozark plateau." The most distinctive of the region's distinguishing geographical features is its topography. Topographically, the proposed viticultural area consists of an elevated plateau, surrounded by highly dissected river and stream valleys. Relative to the surrounding areas, the "Ozark Highlands" are flat. They are also higher in elevation than their immediate surroundings. To support the claim of a topographical distinction, the petitioner submitted a map titled "Topography of Missouri," prepared in 1978 by the Geology and Land Survey of the Missouri Department of Natural Resources. This map shows the proposed "Ozark Highlands" area to be "Isolated Rolling Plains," which are surrounded by "Highly Dissected Plateaus." The topographical distinction is also apparent by examination of contour lines on the U.S.G.S. maps that

¹ Exxon Corporation, Texas Gas Transmission Corporation, Texas Eastern Transmission Corporation, and Williams Natural Gas Company. Applicants respectively request rehearing of the termination of certain of the above-captioned dockets.

² 37 FEREC ¶ 61,212 (1986).

³ 18 CFR 385.713 (1986).

the petitioner submitted. One effect of topography on the viticulture of the "Ozark Highlands" is described by the petitioner as follows: "The higher elevations are often in the form of flat to rolling 'ridge tops' producing prominent and completely unshaded hilltops that are excellent sites for vineyards."

The "Ozark Highlands" can also be distinguished from surrounding areas by soil. In support of this distinction, the petitioner submitted a publication of the U.S. Department of Agriculture's Soil Conservation Service, entitled *Missouri General Soil Map & Soil Association Descriptions*. This publication shows that the soils of the Lebanon-Hobson-Clarksville series are especially distinctive of the proposed area. This soil series occurs extensively within the proposed area, but is found in only a few isolated spots outside of it. Other soils in the proposed area include the Gerald-Union-Goss series and the Hobson-Coulstone-Clarksville series. The latter series occurs to a limited extent within the proposed area, but immediately outside of the area, it becomes predominant.

Distinctive soil patterns often reflect distinctive underlying geologic structures. That this is so in the "Ozark Highlands" is demonstrated by a map called "Geologic Map of Missouri," published in 1979 by the Missouri Geological Society. A copy of this map was submitted by the petitioner. It shows that the soil of the proposed viticultural area is predominantly derived from the Roubidoux Formation, with some Smithville Formation and Pennsylvanian Undifferentiated. That pattern contrasts with the Gasconade Dolomite soil in many of the immediately surrounding areas.

Finally, it is possible to distinguish the "Ozark Highlands" from surrounding areas on the basis of climate. The petition states: "These upper portions are relatively frost-free for longer periods of the year. The cooler frost-causing air in the Spring and Fall of the year flows down the hillsides from the higher to the lower elevations, especially into the deeply trenched river valleys. This leaves the . . . Highlands relatively frost free as compared to the lower elevations."

Name of the Area

On occasion, the name "Ozark Highlands" has been used synonymously with "Ozark Mountains" to refer to the entire Ozark region, encompassing most of southern Missouri and northern Arkansas. (For example, see *The Geography of the Ozark Highland of Missouri* by Carl O. Sauer, University of Chicago Press, 1920, and

Early History of the Northern Ozarks by Gerard Schultz, M.A., Midland Printing Company, 1937.) However, in recent years, the name "Ozark Highlands" has developed an additional meaning. Due to the efforts of the Ozark Highland Vintners, this name has come to refer specifically to the more limited area proposed in this Notice. To demonstrate this, the petitioner submitted more than a dozen newspaper clippings and magazine articles relating to wine production in the "Ozark Highlands" area. In each case, the name "Ozark Highlands" refers to the petitioned area, not to the entire Ozark region. One such article even includes a map pinpointing the location of the area within the State of Missouri. The articles are from well-known local and national publications, including the *St. Louis Post-Dispatch* and *Wines and Vines*.

Under 27 CFR 4.30(a) and 4.64(a)(1), no wine label or advertisement may be misleading. However, ATF believes that the name "Ozark Highlands," if used to refer to the area proposed in this Notice, would not be misleading, because: (1) A viticultural area encompassing the entire Ozark region has already been approved under the name "Ozark Mountain" (see T.D. ATF-231, 51 FR 24142), and (2) the broad meaning of "Ozark Highlands" (having reference to the entire Ozark region) seems to be found primarily in geological and geographical treatises, whereas the narrower meaning is found in publications having wide popular distribution (e.g. newspapers), and in contexts relating to wine and viticulture.

Therefore, ATF believes that the regulatory requirement for evidence supporting the proposed name has been met, and that use of the proposed name in wine labeling and advertising would not be misleading. Nevertheless, comments are requested concerning the appropriateness of the proposed name, and as to whether any other name for this area would be more appropriate. Possible alternative names could include the following: "Missouri Ozark Highlands," "Ozark Highlands of Missouri," and "Ozark Highlands (Missouri)." Commenters may also suggest other names. (A further possibility is that "Missouri" could be required to appear in direct conjunction with "Ozark Highlands," but be permitted in reduced type on labels—as with "Solano County Green Valley" (§ 9.44) and "Sonoma County Green Valley" (§ 9.57).)

Boundaries of the Area

The natural boundaries of the proposed "Ozark Highlands" viticultural area are extremely convoluted. It would be impossible to define those

boundaries precisely and functionally by features that appear on the U.S.G.S. maps submitted by the petitioner. Accordingly, this Notice proposes boundaries that define the proposed area as closely as practicable on those maps. The proposed boundaries reflect the location of the "Ozark Highlands" on land generally over 1,000 feet in elevation, between a number of major rivers and streams. Those rivers and streams are: The Big Piney, Gasconade, Bourbeuse, Meramec, and Current Rivers, and Jack's Fork. The proposed boundaries include all land associated with the geographical features distinguishing the area, as discussed above under *Geography of the Area*. See proposed § 9.115, below, for a complete description of the boundaries.

The proposed boundaries would place the "Ozark Highlands" viticultural area entirely within the approved "Ozark Mountain" viticultural area. In proposing a viticultural area based on geographical features that affect viticultural features, ATF recognizes that the distinctions between a smaller area and its surroundings are more refined than the differences between a larger area and its surroundings. It is possible for a large viticultural area to contain smaller approved viticultural areas, if each area fulfills the requirements for establishment of a viticultural area.

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. Further, the proposal will not 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 Notice of Proposed Rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, the Bureau

has determined that this proposal 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 or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or
- (c) 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.

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 Notice, because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments concerning this proposed viticultural area from all interested persons. Further, while this document proposes possible boundaries for the "Ozark Highlands" viticultural area, comments concerning other possible boundaries for this area will be given consideration.

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 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 commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all the circumstances, whether a public hearing will be held.

List of Subjects in 27 CFR Part 9

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

Drafting Information

The principal author of this document is Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Issuance

Accordingly, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph A. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. B. The table of sections in 27 CFR Part 9, Subpart C, is, amended to add the title of § 9.115, to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

* * * * *

Sec.

9.115 Ozark Highlands.

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Par. C. Subpart C of 27 CFR Part 9 is amended by adding § 9.115, which reads as follows:

§ 9.115 Ozark Highlands.

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

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Ozark Highlands viticultural area are three U.S.G.S. maps of the 1:250,000 series. They are titled:

- (1) Rolla, Missouri; Illinois, 1954 (revised 1969).
- (2) St. Louis, Missouri; Illinois, 1963 (revised 1969).
- (3) Springfield, Missouri, 1954 (revised 1969).

(c) *Boundary*—(1) *General.* The Ozark Highlands viticultural area is located in south central Missouri. The area comprises portions of the following counties: Phelps, Maries, Osage, Gasconade, Franklin, Crawford, Texas, Shannon, Dent, Reynolds, and Pulaski. The beginning point of the following boundary description is the junction of Little Piney Creek and the Gasconade River, near Jerome, Missouri (in the northwest corner of the Rolla map).

(2) *Boundary description*—(i) From the beginning point, the boundary goes northward along the Gasconade River to the latitude line 38°00' (the dividing line between the Rolla and St. Louis maps);

(ii) Then eastward along that latitude line to U.S. Highway 63;

(iii) Then northward along U.S. 63 to Spring Creek;

(iv) Then north-northwestward along Spring Creek to the Gasconade River;

(v) Then northward along the Gasconade River to a power transmission line (less than 1 mile north of Buck Elk Creek);

(vi) Then eastward and east-northeastward along that power transmission line to Missouri Route 19;

(vii) Then southward along Route 19 to the Bourbeuse River;

(viii) Then east-northeastward along the Bourbeuse River to the range line dividing R. 2 W. and R. 1 W.;

(ix) Then southward along that range line to the Meramec River;

(x) Then southwestward along the Meramec River to Huzzah Creek;

(xi) Then southward along Huzzah Creek to Dry Creek (on the Rolla map, where Missouri Route 8 crosses Huzzah Creek);

(xii) Then southward along Dry Creek to Cherry Valley Creek;

(xiii) Then south-southwestward along Cherry Valley Creek to Missouri Route 19;

(xiv) Then southward and southwestward along Route 19 to Crooked Creek;

(xv) Then northwestward along Crooked Creek to the Meramec River;

(xvi) Then southward along the Meramec River to Hutchins Creek;

(xvii) Then southeastward along Hutchins Creek to its source near Missouri Route 32, across from the Howes Mill Post Office;

(xviii) Then in a straight line toward the Howes Mill Post Office to Route 32;

(xix) Then eastward along Route 32 to the range line dividing R. 3 W. and R. 2 W.;

(xx) Then southward along that range line to the township line dividing T. 33 N. and T. 32 N.;

(xxi) Then westward along that township line (which coincides, in R. 3 W., with the Reynolds County/Dent County line) to the boundary of Clark National Forest;

(xxii) Then generally southward along that national forest boundary to the Dent County/Shannon County line;

(xxiii) Then westward along that county line to the Current River;

(xxiv) Then southeastward along the Current River to Missouri Route 19;

(xxv) Then southward along Route 19 to Jack's Fork;

(xxvi) Then westward, southwestward and northwestward along Jack's Fork, taking the North Prong, to its northwesternmost source;

(xxvii) Then in a straight line northwestward to the southeasternmost source of Hog Creek;

(xxviii) Then northwestward along Hog Creek to the Big Piney River (on the Springfield map);

(xxix) Then northward along the Big Piney River to the township line dividing T. 35 N. and T. 36 N.;

(xxx) Then eastward along that township line to Little Piney Creek (on the Rolla map);

(xxxi) Then northward and westward along Little Piney Creek to the beginning point.

Approved: January 30, 1987.

Stephen E. Higgins,
Director.

[FR Doc. 87-2534 Filed 2-6-87; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[86-40]

Safety Zone; San Juan Harbor, San Juan, PR

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering establishing a Safety Zone in the Army Terminal Turning Basin in San Juan Harbor. A new Liquefied Petroleum Gas (LPG) facility is being constructed in this area, and this safety zone is needed to protect its operations. The safety zone would prevent vessels from coming within 100 yards of an LPG carrier while inside San Juan Harbor and vessels greater than 100 feet from using the Army Terminal Turning Basin while a LPG carrier is in port, without first obtaining permission from the Captain of the Port, (COTP).

DATES: Comments must be received on or before March 26, 1987.

ADDRESSES: Comments should be mailed to Marine Safety Office, P.O. Box S-3666, Old San Juan, PR 00904. The Comments and other materials referenced in this notice will be available for inspection and copying at the Marine Safety Office, La Puntilla Final, Old San Juan, PR. Normal office hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG John R. Bingaman at telephone number (809) 725-0857.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting

comments should include their names and addresses, identify this notice (86-40) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafter of this notice is LTJG John R. Bingaman, project officer, and LCDR S. T. Fuger, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

The New LPG terminal is being constructed in San Juan Harbor immediately adjacent to the Army Terminal Turning Basin. In addition, there is already a facility that currently handles LPG on a routine basis in this same area. The configuration of the new facility is such that LPG vessels will extend into the Turning Basin. The Army Terminal Turning Basin is at the junction of two channels; the Army Terminal Channel and the Puerto Nuevo Channel and requires vessels to navigate an extremely sharp turn in order to transit between the channels. Within the past year, there have been two vessel casualties in this area where vessels attempting to make the turn have been involved in collisions. These casualties are in part due to the extreme difficulty in navigating in this area.

LPG is a Cargo of Particular Hazard and as such poses serious risks. The consequences of a vessel casualty involving an LPG vessel could be catastrophic. Given this risk, the configuration of the waterway in the area, and its recent accident history, the Coast Guard feels that a Safety Zone is appropriate to protect the LPG vessels and facilities from accidents.

The Safety Zone is designed to prevent large, relatively unmaneuverable vessels from transiting the Army Terminal Turning Basin while a non gas-free LPG carrier is moored there. Small craft such as Pilot boats and tugs would be permitted to transit the area. However, these small craft would be required to remain 100 yards away from any LPG vessel.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under

Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Those vessels greater than 100 feet will not be significantly affected by this safety zone. When an LPG carrier is in port, vessels requiring access to Puerto Nuevo Channel can transit Graving Dock Channel via Army Terminal Channel. While an LPG carrier is transiting San Juan Harbor, only minor delays to other mariners can be foreseen.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(q), 6.04-1, 6.04-6, and 160.5.

2. Section 165.740 is added to read as follows:

§ 165.740 San Juan Harbor, San Juan, PR.

(a) The waters and waterfront facilities located within the following areas are established as Safety Zones during the specified conditions:

(1) For inbound non gas-free Liquefied Petroleum Gas (LPG) carriers; the waters within a 100 yard radius of the LPG carrier while the vessel transits the waters of San Juan Harbor to the LPG receiving facility commencing with its entry into the Bar Channel.

(2) For non gas-free LPG carriers maneuvering in the vicinity of the Army Terminal Turning Basin and when an LPG carrier is moored; a line beginning at the point located at 18 Deg 26'01.0" N. Latitude, 66 Deg 6'40.5" W. Longitude; thence 050 Deg T to Army Terminal Channel bouy "7" located at 18 Deg 26'9.5" N. Latitude, 66 Deg 6'29.0" W. Longitude; thence 150 Deg T to Army Terminal Channel bouy "9" located at 18