

by regulations promulgated under section 412(i)(2) of the act; or

(2) May be otherwise adulterated or misbranded.

(b) *Method of notification.* The notification made pursuant to § 107.240(a) shall be made, by telephone, to the Director of the appropriate Food and Drug Administration district office specified in § 5.115 of this chapter. After normal business hours (8 a.m. to 4:30 p.m.), FDA's emergency number, 202-857-8400, shall be used. The manufacturer shall send written confirmation of the notification to the Division of Regulatory Guidance (HFF-310), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, and to the appropriate Food and Drug Administration district office specified in § 5.115 of this chapter.

(c) *Reports about an infant formula recall—(1) Telephone report.* When a determination is made that an infant formula is to be recalled, the recalling firm shall telephone within 24 hours the appropriate Food and Drug Administration district office listed in § 5.115 of this chapter and shall provide relevant information about the infant formula that is to be recalled.

(2) *Initial written report.* Within 14 days after the recall has begun, the recalling firm shall provide a written report to the appropriate Food and Drug Administration district office. The report shall contain relevant information, including the following cumulative information concerning the infant formula that is being recalled:

(i) Number of consignees notified of the recall, and date and method of notification, including, for a recall pursuant to § 107.200 information about the notice provided for retail display and the request for its display.

(ii) Number of consignees responding to the recall communication and quantity of recalled infant formula on hand at the time it was received.

(iii) Quantity of recalled infant formula returned or corrected by each consignee contacted and the quantity of recalled infant formula accounted for.

(iv) Number and results of effectiveness checks that were made.

(v) Estimated timeframes for completion of the recall.

(3) *Status reports.* The recalling firm shall submit to the appropriate Food and Drug Administration district office a written status report on the recall at least every 14 days until the recall is terminated. The status report shall describe the steps taken by the recalling firm to carry out the recall since the last report and the results of these steps.

§ 107.250 Termination of an infant formula recall.

The recalling firm may submit a recommendation for termination of the recall to the appropriate Food and Drug Administration district office listed in § 5.115 of this chapter for transmittal to the Division of Regulatory Guidance, Center for Food Safety and Applied Nutrition, for action. Any such recommendation shall contain information supporting a conclusion that the recall strategy has been effective. The agency will respond within 15 days of receipt by the Division of Regulatory Guidance, Center for Food Safety and Applied Nutrition, of the request for termination. The recalling firm shall continue to implement the recall strategy until it receives final written notification from the agency that the recall has been terminated. The agency will send such a notification unless it has information, from FDA's own audits or from other sources, demonstrating that the recall has not been effective. The agency may conclude that a recall has not been effective if:

(a) The recalling firm's distributors have failed to retrieve the recalled infant formula; or

(b) Stocks of the recalled infant formula remain in distribution channels that are not in direct control of the recalling firm.

§ 107.260 Revision of an infant formula recall.

If after a review of the recalling firm's recall strategy or periodic reports or other monitoring of the recall, the Food and Drug Administration concludes that the actions of the recalling firm are deficient, the agency shall notify the recalling firm of any serious deficiency. The agency may require the firm to:

(a) Change the extent of the recall, if the agency concludes on the basis of available data that the depth of the recall is not adequate in light of the risk to human health presented by the infant formula.

(b) Carry out additional effectiveness checks, if the agency's audits, or other information, demonstrate that the recall has not been effective.

(c) Issue additional notifications to the firm's direct accounts, if the agency's audits, or other information demonstrate that the original notifications were not received, or were disregarded in a significant number of cases.

§ 107.270 Compliance with this subpart.

A recalling firm may satisfy the requirements of this subpart by any means reasonable calculated to meet the obligations set forth in this Subpart E. The recall guidelines in Subpart C of

Part 7 of this chapter specify procedures that may be useful to a recalling firm in determining how to comply with these regulations.

§ 107.280 Records retention.

Each manufacturer of an infant formula shall make and retain such records respecting the distribution of the infant formula through any establishment owned or operated by such manufacturer as may be necessary to effect and monitor recalls of the formula. Such records shall be retained for at least 1 year after the expiration of the shelf life of the infant formula.

(Collection of information requirements in this section were approved by the Office of Management and Budget under OMB control number 0910-0188.)

Dated: December 22, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-281; Ref: Notice Nos. 620, 644, 647]

Stags Leap District Viticultural Area

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

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Napa County, California, to be known as "Stags Leap District." The northern boundary alone has been modified from that originally proposed, to the Yountville Cross Road. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify the wines they may purchase, and will help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: February 27, 1989.

FOR FURTHER INFORMATION CONTACT:

James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:**I. Background****A. History**

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow 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.

B. Regulatory Criteria

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American 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 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 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.

II. General Description—Final Rule

The Stags Leap District viticultural area is located east of the city of Yountville and approximately seven miles north of the city of Napa. It is bounded on the north by the Yountville Cross Road, on the east by the Stags Leap mountain range (400 foot contour line), on the south by a drainage creek that intersects the Silverado Trail at about the 60 foot contour line, and on the west by the Napa River. This viticultural area consists of approximately 2,700 acres, includes nine bonded wineries and approximately

1,350 acres of grapes, and is entirely within the Napa Valley viticultural area.

III. Rulemaking Proceeding**A. Petition**

On August 22, 1985, the Stags Leap Appellation Committee (hereinafter referred to as Group A), petitioned ATF for establishment of a viticultural area in Napa Valley, California, to be known as "Stags Leap." The area proposed by the petitioners consisted of approximately 2,200 acres (including approximately 1,100 acres of vineyards), situated east of the city of Yountville, and five to eight miles north of the City of Napa. The proposed area was surrounded by hills to the north, east, and west, and was configured like a funnel.

Group A then submitted an amendment to its petition, dated December 18, 1985 (hereinafter referred to as the First Amendment) and requested, among other things, that the name of the proposed viticultural area be changed from "Stags Leap" to "Stags Leap District." This was done in order to underscore further the difference between the viticultural area designation and the names of two wineries within the proposed appellation, Stag's Leap Wine Cellars and Stags' Leap Winery.

On June 26, 1986, Group A submitted a second amendment and supplement to its original petition (hereinafter referred to as the Second Amendment). The Second Amendment requested a revision of the northern and western boundaries of the proposed Stags Leap District. Attached to the Second Amendment was a research document prepared by Silverado Vineyards, in support of Group A's contention that the Napa River, rather than the peaks of the hills west of the Silverado Trail, was the appropriate western boundary for the proposed viticultural area, and the ring of hills to the north was a more appropriate northern boundary. The revision of the northern and western boundaries added approximately 350 acres to the proposed viticultural area, for a total size of approximately 2,550 acres. Included within the extended boundaries were previously excluded vineyards owned by, among others, Silverado Vineyards and Mondavi Winery.

B. Notice

In response to the Second Amendment, ATF published Notice No. 620 in the *Federal Register* on February 11, 1987 (52 FR 4350), proposing establishment of the Stags Leap District viticultural area. The notice detailed the

boundaries as proposed in the Second Amendment, and requested comments. Written comments were to be received on or before April 13, 1987.

C. Comments

ATF received two comments in response to the notice of proposed rulemaking. One comment in particular, dated April 10, 1987, was submitted by Mr. Stanley Anderson of S. Anderson Vineyard. Mr. Anderson, who owns a winery and vineyards located just north of the proposed northern boundary, requested that the northern boundary be extended approximately 500 yards. He suggested that the Yountville Cross Road would be a more appropriate boundary than the peaks of hills as proposed in Notice No. 620. The proposed revision would add 150 acres to the proposed Stags Leap District, for a total size of approximately 2,700 acres. With the exception of the northern boundary, Mr. Anderson supported the other boundaries as proposed in the notice.

Attached to Mr. Anderson's comment were letters from several neighboring vineyard owners who are also located in the proposed "northern extension," all of whom supported the extension of the northern boundary to the Yountville Cross Road. Mr. Anderson, and those of his neighbors who supported the northern extension, will hereinafter be referred to as Group B.

D. Hearing

In consideration of the comments received, ATF determined that the public interest would best be served by holding a public hearing on the matter. Pursuant to Notice No. 644, published on September 29, 1987 (52 FR 36431), ATF held a hearing on December 1 and 2, 1987, in Yountville, California, concerning establishment of the viticultural area. ATF heard oral comments from 32 persons. At the hearing, Mr. George Altamura (Altamura Vineyards & Winery), requested that the southern boundary of the proposed viticultural area be extended (approximately 2 miles) in order to include his vineyard and winery.

As specified in Notice No. 644, written comments were to be received on or before December 15, 1987. This date was then extended until January 15, 1988 (Notice No. 647, 52 FR 44917; November 23, 1987). In response to Notice Nos. 644 and 647, the Bureau received 167 comments, representing 172 signatures. ATF also received nine comments after the expiration of the comment period. All comments were given careful

consideration in the preparation of this final rule.

IV. Decision

After extensive consideration of the evidence and comments presented regarding establishment of a Stags Leap District viticultural area, ATF finds that the evidence submitted with respect to the boundaries proposed by Group B satisfies the regulatory criteria set forth in § 4.25a(e)(2) of Title 27, Code of Federal Regulations, for the establishment of the Stags Leap District viticultural area.

Although recognizing that there is evidence which would support both Group A and Group B in this matter, ATF finds that the greater weight of evidence supports the Group B proposal. ATF finds that the general area encompassed within the boundaries proposed by Group B is locally referred to as Stags Leap District. In the Bureau's view, Group B adequately demonstrated that their proposed area reflects the current definition of Stags Leap District.

Further, ATF finds that the distinguishing features in the area proposed by Group A are also present in the northern extension proposed by Group B. Specifically, the soils in the northern extension are more similar to the soils within the area originally proposed than to the soils outside the proposed Stags Leap District. ATF believes that the soils (including subsoils) are the primary distinguishing geographical feature of the Stags Leap District.

In contrast, ATF finds that the evidence submitted in support of the proposed extension of the southern boundary did not satisfy the regulatory criteria. Specifically, there was no evidence that the area within the proposed southern extension is locally or nationally known as "Stags Leap (District)."

The boundaries of the viticultural area established by this final rule generally correspond to the area initially proposed by Group B, with modifications to avoid dividing existing vineyards. The specific boundaries of the viticultural area may be found at § 9.117.

V. Evidence

The following summarizes the evidence on which this final rule is based. As applicable, the petition, amendments, comments, and public hearing transcripts and exhibits are cross-referenced. This is indicated by parenthetical notations such as (Petition, p. * * *), (Tr. Vol. * * *, p. * * *), (Hearing Exhibit * * *), etc. In addition, to distinguish between comments received in response to the

notice of proposed rulemaking (NPRM) and comments received in response to the hearing notices, comments will be referred to as either (NPRM Comment * * *) or (hearing Comment * * *).

A. Name

Both Group A and Group B submitted evidence which clearly established that there exists an area in Napa County, California, east of Yountville, with a viticultural history, known both historically and currently as Stags Leap District. (Petition, pp. 2-17; NPRM Comment 1). The only dispute regarding the name Stags Leap District concerns the specific boundaries of the viticultural area known by that name. Accordingly, ATF finds, based on the evidence, that both Group A and Group B satisfied the criteria of 27 CFR 4.25a(e)(2)(i) concerning the name of the viticultural area.

B. Boundaries

Group A submitted evidence that historically, the name Stags Leap was used solely in reference to Horace and Minnie Chase's summer manor house (Stags Leap Manor) constructed in 1890, their winery built in 1893, and the rocky promontory overlooking the area. (Petition, pp. 2-7, p. 25). For example, the petitioners submitted a copy of a wine label from the Chase winery indicating the name "Stags' Leap." (Petition, Exhibit 4). They also stated that "when old timers talk about the boundaries of Stags Leap District, they are more likely to be referring to the old Chase place and its immediate vicinity than they are to the broader viticultural area, which did not begin to be called Stags Leap until some time in the 1970s." (Second Amendment, p. 12).

Since the early 1970's, Mr. Carl Doumani (Stags' Leap Winery) and Mr. Warren Winiarski (Stag's Leap Wine Cellars) have included various brand and trade names on their wine labels which incorporate the geographic designation Stags Leap. (Petition, pp. 11-12; Petition, Exhibit 10).

In a 1973 court decision involving litigation over the use of the name Stags Leap, the judge ruled that "to a person of ordinary intelligence * * * 'STAG'S LEAP' is a designation for a substantial area or a range of mountains or hills." (Petition, p. 10). Thereafter, in the 1974 promotional material for his winery, Mr. Winiarski noted that "Stag's Leap is a regional designation which should in time become as familiar to wine buyers as certain domains in European wine-growing regions." (Petition, pp. 15-16; Petition, Exhibit 10). The name Stags Leap gained further prominence when, in 1976, Mr. Winiarski's 1973 Cabernet

Sauvignon took first place at a blind tasting in Paris, France. (Petition, p. 14).

While there was general agreement about the history of Stags Leap, the issues of contention during this rulemaking proceeding have centered around the northern boundary in particular and, to a lesser degree, the southern and western boundaries.

1. Southern Boundary

At the public hearing, Mr. George Altamura (Altamura Vineyards & Winery) commented that the area in which his vineyards and winery are located shares many of the same geographical features found within the proposed Stags Leap District, including soil series, vegetation, and air-flow pattern. Because of this, Mr. Altamura proposed that the southern boundary of the viticultural area be extended, approximately two miles, to a point where Soda Creek flows into the Napa River. (Tr. Vol. III, pp. 139-145). Mr. Altamura submitted evidence indicating that certain soils in the proposed southern extension (e.g., Haire series) were also found in the proposed Stags Leap District. (Hearing Exhibit 39; Hearing Comment 81).

In a post-hearing written comment (Hearing Comment 48), Mr. Ernie Weir of Hagafen Cellars stated that if the southern boundary was to be extended to include Mr. Altamura, he would also like his vineyards and winery to be included, however, "perhaps a more appropriate and correct southern border will not include either of us."

Neither Mr. Altamura nor Mr. Weir submitted evidence which would indicate that the name "Stags Leap" was locally or nationally known as referring to the proposed southern extension.

As previously mentioned, the regulations in 27 CFR 4.25a(e)(2) outline the procedure for proposing an American viticultural area. In particular, §§ 4.25a(e)(2) (i) and (ii) specify that evidence must be submitted indicating that the name of the viticultural area is locally and/or nationally known as referring to the area in the petition, and that the boundaries of the viticultural area are as specified in the petition. Based on the information in the rulemaking record, there is no evidence as to name, either historical or current, to support an extension of the southern boundary from that proposed in Notice No. 620. Therefore, ATF is not extending the southern boundary as proposed by Mr. Altamura.

2. Northern Boundary

Conflicting evidence as to the northern boundary was submitted in the

petition, comments, and public hearing testimony. In its initial petition, Group A noted that there had been lively disagreement among the wine press over the boundaries of Stags Leap District. (Petition, p. 32). Group A and Group B both presented letters and declarations from long-time residents of the area, which presented conflicting recollections of the boundaries of the Stags Leap District. (Petition, Declarations B and C; NPRM Comment 1, Exhibits J-1 and P-1; Hearing Exhibit 2; Hearing Exhibit 28). Based on the evidence presented, ATF finds that while there are differences in the recollections of local residents as to the boundaries of the Stags Leap District, there is evidence to support the conclusion that the northern extension is known locally as part of Stags Leap District.

Mr. William F. Heintz, a wine historian, testified on behalf of Group A at the public hearing. Mr. Heintz stated that in the 1880s, the Napa Wine Growers Association created a series of sub-districts within the southern part of Napa Valley, for the purpose of gathering data. Mr. Heintz extrapolated from the available data that the boundaries of one of these sub-districts closely corresponded to the boundaries of the Stags Leap District, as proposed in Notice No. 620. (Tr. Vol. I, pp. 62-64). This evidence was disputed by Charles Sullivan, another wine historian, who contended that the evidence from the 19th century was too incomplete to draw any conclusions as to boundaries. Mr. Sullivan stated that for purposes of determining the validity of the appellation, only the history since the 1960s was relevant. (Hearing Comment 103). ATF finds that the evidence about the 19th century boundaries of the Napa Wine Growers Association sub-districts was inconclusive; therefore, this evidence was not considered to be significant for purposes of determining the current boundaries of the Stags Leap District.

Group A also presented evidence to the effect that the vineyard owners in the northern extension referred to themselves as being located in "Yountville" rather than "Stags Leap." (Hearing Comment 84, p. 8; Hearing Exhibit 10). Group A pointed to the fact that none of the grapes grown in the northern extension were used in wines that were labeled as "Stags Leap." (Hearing Comment 84, p. 9). They also pointed to the fact that one of the vineyard owners in the proposed extension, Mr. Jack Abruzzini, called his vineyard "J. Abruzzini's Yountville Vineyard," and considered himself as

being within the Yountville area, rather than the "Stags Leap District." (NPRM Comment 2; Hearing Comment 29).

Group B presented evidence that the terms Yountville and Stags Leap District were not mutually exclusive, and stated that residents within the proposed Stags Leap District and the proposed northern extension had ties to the cities of Napa and Yountville. Mrs. Dorothy Barboza, a vineyard owner in the northern extension, submitted evidence that various vineyards and wineries located within the boundaries of the proposed Stags Leap District were listed in the telephone book as being in Yountville and Napa. (Tr. Vol. III, p. 58; Hearing Exhibit 33). Mrs. Barboza also submitted evidence that three of the wineries in the proposed Stags Leap District were members of the Yountville Chamber of Commerce. (Hearing Exhibit 35). In addition, Mrs. Barboza submitted labels for one winery in the proposed Stags Leap District indicating Yountville as its location. (Hearing Exhibit 30).

Group B argued that there was no uniformity in self-description in the Stags Leap District; thus, there was no contradiction between using a Yountville address and being within the Stags Leap District viticultural area. ATF finds that the various wineries and vineyards within both the proposed Stags Leap District and the so-called "northern extension" used various names in geographical self-description, including Yountville and Napa. Thus, the Bureau does not find that this criteria is a useful means of distinguishing vineyards and wineries within the appellation from those outside the appellation.

Both Group A and Group B submitted various articles from the wine press and the general press to support the respective boundaries proposed. Most of the articles submitted did not articulate specific boundaries for the Stags Leap District, but merely referred to the fact that various wineries or vineyards were located within the boundaries of Stags Leap. Of the articles which did mention specific boundaries, there was no uniformity.

For example, one article implied that the Stags Leap District area extended as far west as the Napa River (Petition, Exhibit 13, *Trumpetvine Wines*, April 1985, "Stags Leap Saga, Part II"), while others implied that the Silverado Trail (Petition, Exhibit 13, *Connoisseur's Guide to California Wine*, Jan-Feb 1977), or perhaps an area to the west thereof (Hearing Exhibit 12, the Napa Register (4/17/81), "Napa Wines Take Tasting Honors") were the boundary. In one article, a vineyard/winery owner

described the Stags Leap District as consisting of only 450 acres (Petition, Exhibit 13, *The Wine Spectator*, January 1-31, 1985, "Standing Fast for Cabernet"), while in another article, it was described as consisting of 1,000 acres. (Petition, Exhibit 13, *Friends of Wine*, April-May 1984, "Napa Winery Profiles: The Quest For Site").

Some of the evidence submitted was susceptible of more than one interpretation. For example, in support of the extended northern boundary, Group B submitted as evidence a map prepared by the U.S. Department of Agriculture (USDA) Soil Conservation Service (SCS) which included a sub-district known as "South East Yountville Stag's Leap Area." (NPRM Comment 1, pp. 6-7). The sub-district had as its northern boundary the Yountville Cross Road, and as its western boundary the Napa River. Although the southern boundary extended almost all the way to the city of Napa, it did *not* include the vineyards owned by Mr. Altamura or Mr. Weir.

Group A countered with the claim that the map supported its assertion that the so-called northern extension was a part of Yountville. (Hearing Comment 84, p. 7). ATF contacted the SCS, and was informed by letter dated May 16, 1988, that the boundaries were drawn based on the property lines of "cooperators," i.e., ranches and farms being assisted by the SCS. (Requested Information 5). The map was for internal filing purposes only, and was not distributed to the public. In addition, the map submitted by Group B was a replacement for one originally drawn up during the 1950s, but which had been lost sometime before 1983. Consequently, as pointed out by the SCS, " * * * it is highly unlikely that the current map matches the original." Therefore, ATF has concluded that the map is not of great evidentiary weight, and that it does not support conclusively either Group A or Group B.

Both Group A and Group B have pointed for support to an article that appeared in the September 1981 issue of *Vintage Magazine*, entitled "How Many Stags in a Stag's Leap?" (Petition, Exhibit 13). In describing the Stags Leap District, the author of the article, Richard Paul Hinkle, defined its bounds "[f]or the immediate sake of argument, * * * as being Clos du Val on the south, the Silverado Trail on the west, an extension of the Yountville Cross Road on the north (just south of Rector Reservoir), and the rocky promontories of the eastern flank of the Mayacamus Mountains (also called Stags Leap) to the east."

Group B uses this article in support of its contention that the northern boundary goes as far north as the Yountville Cross Road. (NPRM Comment 1, p. 4, 8). Group A points to the fact that the boundaries as articulated by Mr. Hinkle would eliminate all vineyards located west of the Silverado Trail (Hearing Comment 84, p. 6) including, among others, the vineyards of S. Anderson Vineyard, Pine Ridge Winery, Silverado Vineyards, and Mondavi Winery. However, Mr. Hinkle's article does go on to say that "[a] significant chunk of acreage may be disputed when the western boundaries come up for discussion. Involved are the Disney (Silverado) vineyards * * *, Pine Ridge's vines * * *, and Mondavi's * * *."

ATF finds that neither the Hinkle article, nor any other article submitted in the rulemaking record, specifically lists boundaries identical to either proposal. In addition, none of the articles submitted provides a comprehensive, all-inclusive list of wineries and vineyards included in the area which would correspond to the boundaries proposed by Group A or Group B.

Most of the articles submitted were not intended to present definitive lists of the wineries and vineyards within the Stags Leap District. Therefore, ATF does not find that the fact that some vineyards or wineries were not mentioned is evidence that those vineyards or wineries are not within the Stags Leap District. Some of the smaller vineyards located in the center of the proposed Stags Leap District were not mentioned in any of the articles submitted. Instead, ATF has found the press articles useful in setting the parameters of the boundaries of the Stags Leap District.

With reference to the disputed northern boundary, it should be noted that Group A did not submit any articles which specifically placed the northern boundary at the hills, as proposed in Notice No. 620. However, Group B submitted one article which specifically included S. Anderson Vineyard on a map of the "Stag's Leap Area." (NPRM Comment 1, Exhibit E). In addition, Group B submitted a copy of a 1983 itinerary for a wine touring business, Wine Adventures, Inc., which refers to S. Anderson Vineyard as being located in the Stag's Leap region. (Hearing Comment 47; Requested Information 2). Thus, ATF finds that the weight of the evidence supported the northern addition proposed by Group B.

3. Western Boundary

With reference to the western boundary, although there was no dispute to the boundary among the participants at the hearing, ATF did receive conflicting evidence as to its correct location. Specifically, while Group A amended its petition to move the western boundary from the hills west of the Silverado Trail to the Napa River, articles were submitted which indicated that the western boundary was somewhere east of the Napa River. (Hearing Exhibit 12; Petition, Exhibit 13). This conflict was noted in the Hinkle article previously mentioned. However, Group A presented evidence which indicated that the Napa River was the western boundary of the Stags Leap District area. (Petition, Exhibit 13). In addition, Group A submitted articles which specifically included Silverado Vineyards and Mondavi Winery vineyards as part of the Stags Leap area. (Second Amendment, pp. 3-4; Petition, Exhibit 13). ATF finds that the weight of the evidence supports the placement of the western boundary at the Napa River, as proposed in Notice No. 620.

4. Examples of Evidence Utilized in Support of Decision

ATF has utilized over 40 pieces of information which, taken collectively, support the boundaries as adopted in this Treasury decision. In the following paragraphs, the Bureau will provide some examples of the evidence it used in establishing the boundaries of the Stags Leap District viticultural area.

Northern Boundary—S. Anderson Vineyard. (1) A copy of an itinerary (dated 10/13/83) for a wine touring business, Wine Adventures, Inc., which refers to S. Anderson Vineyard as being located in the Stags Leap wine region. (Hearing Comment 47; Requested Information 2).

(2) An article, entitled "(Sinskey) Winery Cleared Over Objections" (Napa Register, 2/5/87), includes S. Anderson Vineyard on a map of the "Stag's Leap Area." (NPRM Comment 1, Exhibit E).

(North) Eastern Boundary—Shafer Winery, Stags' Leap Winery. (1) Copies of certificates of label approval for Shafer brand 1978 Cabernet Sauvignon and 1980 Zinfandel (dated 5/20/80 and 3/5/82, respectively). The labels indicate that the "grapes were grown in the Stag's Leap area of the Napa Valley." The grapes were grown in Shafer's vineyards. (Petition, Exhibit 10; Requested Information 4).

(2) An article in the April-May 1984 issue of *Friends of Wine* (page 35) which describes Shafer Vineyards as being

located in the Stags' Leap area. (Petition, Exhibit 13).

(3) A copy of a certificate of label approval (dated 8/20/82) for Pine Ridge brand 1980 Merlot. The label indicates that part of the wine was derived from grapes grown in the "Stag's Leap district." The grapes came from the vineyards of Stags' Leap Winery. (Petition, Exhibit 10; Requested Information 4).

(4) An article in the April 1985 issue of *Trumpetvine Wines*, entitled "Stags Leap Saga, Part II," describes Stags' Leap Winery as being located in the "Stags Leap area." (Petition, Exhibit 13).

Southern Boundary—Clos du Val Winery. (1) In the revised edition of Bob Thompson's "The Pocket Encyclopedia of California Wines" (Copy, 1985), a reference is made that "most of the grapes (to make Clos du Val wines) come from winery-owned vineyards around the cellars at Stag's Leap * * *"

(2) In the third edition of Alexis Lichine's "New Encyclopedia of Wines & Spirits" (Copy, 1984), Clos du Val Winery is described as having "about 300 acres * * * of vineyards in the Stag's Leap and Carneros districts * * *"

Western Boundary—Silverado Vineyards, Robert Mondavi Winery. (1) A copy of a photograph that appeared in the January 1-31, 1982 issue of *The Wine Spectator*, with the caption "Silverado Vineyard, in Napa's Stag's Leap area, takes form." (Petition, Exhibit 13).

(2) In a review of Silverado's 1981 Cabernet, the *California Grapevine* (April-May 1984) noted that the "grapes were estate-grown in the Stag's Leap area." (Second Amendment, p. 5).

(3) In an article appearing in the *San Francisco Examiner* (3/9/83), writer Harvey Steiman notes that "Robert Mondavi has vineyards here (Stag's Leap District)." (Petition, Exhibit 13).

(4) An article in the April 1985 issue of *Trumpetvine Wines* (previously mentioned), includes the vineyards of Robert Mondavi, east of the Napa River and west of the Silverado Trail, as being included in the "Stags Leap area." (Petition, Exhibit 13).

Central Area—Pine Ridge Winery, Steltzner Vineyards, Stag's Leap Wine Cellars, Nathan Fay Vineyards. (1) In the September 1981 issue of the *Alabama Wine Guide* (Vol. 1, No. 4), Pine Ridge Winery is described as being "located in the Stag's Leap district of the Napa Valley." (Hearing Exhibit 12).

(2) In an article that appeared in the June 1, 1983 edition of the *San Francisco Chronicle*, entitled "Cabernets of Stag's Leap," writer Anthony Dias Blue mentions some of the wineries in the "Stags Leap district" including Pine

Ridge and Stag's Leap Wine Cellars. Reference is also made to the vineyards of Richard Steltzner as being located in the Stags Leap area. (Petition, Exhibit 13).

(3) In the third edition (revised) of "The Connoisseurs' Handbook of California Wines" by Charles E. Olken, Earl G. Singer and Norman S. Roby (Copy, 1984), Stag's Leap is described as being east of Yountville and including Stag's Leap Wine Cellars. (Petition, Exhibit 13).

(4) Point of sale literature for St. Andrew's Vineyard brand 1981 Cabernet Sauvignon which indicates that part of the wine was derived from grapes grown in the "Stag's Leap area in the Napa Valley." The grapes were grown in Richard Steltzner's vineyards. (Petition, Exhibit 11; Requested Information 1).

(5) A copy of a certificate of label approval (dated 3/15/82) for San Francisco Symphony brand 1979 Cabernet Sauvignon which indicates "Stag's Leap District" as the origin of the wine. The label states that the grapes came from the vineyards of Richard Steltzner.

(6) A copy of a certificate of label approval (dated 10/30/80) for Berkeley Wine Cellars brand 1978 Cabernet Sauvignon which indicates the "Stag's Leap Region of Napa Valley" as the origin of the wine. The grapes came, in part, from the vineyards of Nathan Fay. (Petition, Exhibit 11; Requested Information 1).

(7) A copy of a certificate of label approval (dated 6/1/84) for Bay Cellars brand 1982 Clarion red wine. The label indicates that the wine was produced, in part, from grapes grown in the "Stag's Leap region." The grapes came from Nathan Fay's vineyards. (Petition, Exhibit 11; Requested Information 1).

After consideration of all of the evidence presented, ATF has concluded that there is sufficient evidence to substantiate that the additional area proposed by Group B has been and is currently considered within the Stags Leap District by the general public. Consequently, ATF finds that the area encompassed within the boundaries proposed by Group B accurately reflects the grape growing region known as Stags Leap District.

C. Geographical Features

Group A contends that their proposed area is distinguished from surrounding areas by geographical features. They maintain that the topography, climate, and soils which characterize their proposed area combine to produce unique growing conditions. Moreover, they contend that the additional area

encompassed by the Group B proposal is characterized by geographical features which are more similar to the Napa Valley floor than to their proposed area.

On the other hand, Group B maintains that there are no significant differences in topography or climate between the area proposed in Notice No. 620 and the northern extension area. Group B presented evidence that the soils in the northern extension were the same as the soils in the proposed area.

1. Topography

In their initial petition, Group A submitted evidence that the proposed Stags Leap (District) viticultural area had a distinct microclimate, resulting from the orographic configuration of the area. They contended that the area, surrounded on three sides by hills or mountains, was configured like a funnel, which accentuated the inflow of cool air from San Pablo Bay, which is located south of the proposed area. (Petition, pp. 38-39). As stated in the weather report of Irving P. Krick Associates, Inc. (Petition, p. 39):

The wide end of the funnel faces south to receive the bay breeze and the frequent fogs and low clouds which accompany it. These breezes are then guided into the area by its unique topography, including the mountains to the east of the Silverado Trail and the series of contiguous hills to the west of the Trail, which serve as the two sides of the funnel.

The Krick report goes on to state that the topography of the area also controls the movement of air out of the area, "[s]pecifically, the air exits to the mountain elevations to the north or, * * * to the main valley floor through the narrow passes at the north of Stags Leap." (Petition, p. 39).

However, with the subsequent extension of the western boundary from the hills west of the Silverado Trail to the Napa River (Second Amendment), as proposed in Notice No. 620, ATF does not believe that the topography of the viticultural area is a significant geographical feature in determining a western boundary. As meteorologist Donald Schukraft (Weather Network, Inc.) stated at the public hearing in discussing the extended (western) area, "[t]here is no funnel effect here. This area is open to the Valley." (Tr. Vol. I, p. 125).

Similarly, ATF does not believe that topography is a significant geographic feature in determining the northern boundary of the Stags Leap District viticultural area. Although the petitioners had noted that the northern ring of hills, just south of the Yountville Cross Road, defined part of the "funnel," no evidence was submitted in the

rulemaking proceeding which conclusively demonstrated a difference between the area north and south of the hills.

2. Climate—Temperature

In their Second Amendment, Group A included a weather study of the proposed viticultural area (as specified in Notice No. 620), prepared by Weather Network, Inc. Weather data was obtained from thermographs and automatic weather stations located both inside and outside (e.g., approximately ½ mile west of) the proposed viticultural area. As noted in the report (Second Amendment, p. 34):

* * * the daily maximum and minimum temperatures recorded by the stations in Stags Leap District were generally several degrees higher than those recorded by the weather station to the west of the Napa River and near the center of the Valley floor. On some days the differences between the two stations were over ten degrees.

However, Weather Network, Inc. did not set up a weather station in the proposed northern extension area. Consequently, there is no data available from that area. Moreover, the petitioners had conceded that actual maximum temperature values were not significantly different from those in nearby areas. (Petition, p. 40). In the aforementioned Krick report, it was stated that the funnel effect did not cause degree day values as currently calculated to vary appreciably between the Stags Leap area and the adjacent Napa Valley areas, and "for this reason it would be misleading to use only degree-days as a criteria for evaluating the microclimate of the various vineyards within short distances of Stags Leap." (Petition, p. 40).

At the public hearing, Mr. Donald Schukraft, a certified consulting meteorologist, commented that the hills along the northern boundary of the proposed Stags Leap area "provide changes in the wind-flow pattern that consequently produce changes in the temperatures and humidity in the vineyards to the north and south of the hills. These changes * * * are not found at the Yountville Cross Road." (Tr. Vol. I, p. 118). For example, Mr. Schukraft asserted that on a day when the wind-flow is from the south, the air would flow around the northern hills (south of the Yountville Cross Road) and exit the area south of the northern hills, resulting in temperatures that are lower and humidity that is higher than the area north of the hills. However, Mr. Schukraft presented no climatological data to support those conclusions.

ATF received conflicting reports from vineyard owners both within the proposed area and within the northern extension as to the effects of the wind on their respective grape vines.

Mr. Richard Chambers, who owns a vineyard in the northern extension, stated at the public hearing that the area in the northern extension (south of the Yountville Cross Road) also receives the breezes from the San Pablo Bay. (Tr. Vol. III, p. 25). To support this contention, he provided photographs of his vineyard and other vineyards in the northern extension (S. Anderson Vineyard and Missimer Vineyard) which depicted grape vines bent over, growing toward the north, away from the south wind. On the other hand, in the area around Yountville (west of the Napa River), Mr. Chambers noted only neutral vine growth. (Hearing Exhibit 27). As to how far north the strong wind extended, Mr. Chambers stated that "it undoubtedly crosses the Yountville Cross Road," before dissipating in the area further up State Lane. (Tr. Vol. III, p. 26).

However, Group A submitted evidence to the contrary. In their post-hearing brief (Hearing Comment 84, Exhibit P), Mr. John Stuart of Silverado Vineyards stated that in Silverado's vineyards in Yountville, cane growth is also oriented toward the north, with subsequent wind damage. Mr. Robert Egan submitted a post-hearing comment (Hearing Comment 85) which included photographs of Mr. Chambers' vineyard and Mr. Anderson's vineyard indicating that the wind had little or no effect on the vines or canes in either vineyard.

Mr. Egan provided photographs of his own vineyard, located just south of the northern hills, and suggested that the vines tended to lean to the north as a result of the wind.

ATF finds that the evidence presented as to the effect of the wind within the proposed viticultural area is too inconclusive to support a finding that the northern hills provide a significant barrier to the winds from the south, with resulting differences in temperature. ATF notes that the evidence presented at the hearing indicated that there was no "funnel effect" from the area west of the hills west of the Silverado Trail to the Napa River. ATF does not believe that the "funnel effect" represents a significant geographical feature of the entire viticultural area as proposed by Group A. Therefore, ATF does not believe that climate, with regard to temperature, is a significant distinguishing geographical feature in determining the boundaries of the Stags Leap District viticultural area.

3. Climate—Precipitation/Moisture

Based on data presented in the USDA SCS *Soil Survey of Napa County, California* (August 1978), average annual precipitation within the Stags Leap District is 25 to 30 inches.

Similar amounts of rainfall can be expected in the areas west and south of the viticultural area, while average rainfall north and east of the viticultural area increases to between 30 and 35 inches. ATF notes that there is no conclusive evidence that the area between the Yountville Cross Road and the northern hills has different precipitation patterns from the proposed viticultural area.

Professor Elliott-Fisk, an expert witness for Group A, concluded that the types of plants and density of forests and woodlands on the ridges and hills of the proposed Stags Leap District indicate the entrapment of moist, marine air within the area. She also stated that with the exception of the oak-madrone woodland, other types of woodlands found within the proposed Stags Leap District, such as the oak forest, madrone forest, and conifer-hardwood forest, do not continue to the north and south of the proposed district. (Hearing Comment 84, Exhibit M, p. 2). This evidence was disputed by Mrs. Dorothy Barboza, a vineyard owner in the northern extension, who sent photographs of conifer trees in the northern extension. (Post Hearing Comment Period 3). The Bureau has determined that there is insufficient evidence on this issue to support a finding that the types of vegetation in the northern extension differ significantly from the types of vegetation found in the proposed Stags Leap District.

4. Soil—General

Based on the evidence submitted in this rulemaking procedure, ATF has concluded that the soil (including the subsoil) is the primary geographical feature that distinguishes Stags Leap District from the surrounding areas.

According to the SCS soil survey, there are 31 soil series within Napa County. Approximately 45% of these soil series are present within the Stags Leap District, as adopted by this Treasury decision. Certain of these soil series, such as Millsholm, Perkins, and Kidd, are found within the viticultural area but not in the surrounding areas. However, within the Stags Leap District area, the Bale soil series predominates. Bale soils are also found to the north of the viticultural area, but not in the surrounding areas to the east, south, or west. The SCS describes Bale soils as being somewhat poorly drained on

alluvial fans, flood plains, and low terraces. As described in the soil survey, they are formed in alluvium derived from rhyolite and basic igneous rock. In the following paragraphs, the Bureau will discuss the reasons why it concluded that the soils of the Stags Leap District form the best geographical basis for distinguishing the District from the areas which surround it.

a. Eastern Boundary. The Stags Leap mountain range is located just east of the Stags Leap District. Consequently, this area consists mainly of Rock outcrop and, to a lesser degree, the Hambright soil series. The SCS soil survey notes that these types of soils are not used for growing wine grapes, either because they are not suitable or there is no water available for irrigation. (SCS Soil Survey, August 1978, pp. 40-43).

b. Southern Boundary. The dominant soils south of the viticultural area include the Hambright series, the Haire series, the Yolo series, and the Cole series. These four soil series converge just south of the viticultural area and, in effect, "pinch" it off. In addition, in its post-hearing comment, Group A noted that there is a confluence of three drainage systems just south of the viticultural area—the Napa River, Dry Creek, and Hopper Creek. (Hearing Comment 84, Exhibit U).

c. Western Boundary. In Group A's initial petition, they submitted a report on soils from viticultural consultant Richard Nagoaka. Mr. Nagoaka stated that the dominant soils west of the Napa River include the Yolo series, the Cole series, and the Clear Lake Series. (Petition, p. 48). Mr. Nagoaka also stated that:

The soils to the east of the (Napa) river (the Stags Leap side) were deposited by alluvial forces from parent materials from the Vaca Range on the eastern rim of the Napa Valley. By contrast, the soils to the west of the Napa River were deposited from parent materials from the Mayacamas Range on the western rim of the valley. These two ranges not only appear different, but are composed of profoundly different materials. (Petition, p. 45).

According to Mr. Nagoaka, the Vaca mountain range was formed about ten million years ago through volcanic activity. In contrast, the Mayacamas mountain range formed about 30 million years ago, and is composed of fines and sedimentary materials. Thus, as Mr. Nagoaka pointed out, soils west of the Napa River "tend to be deeper, more fertile and of greater water-holding capacity" than those east of the Napa River. (Petition, p. 46). Because of the greater water-holding capacity, soils west of the Napa River do not require

late irrigation. Mr. Nagoaka compared the water-holding capacity of the Cole silt loam soils (west of the Napa River) with the Bale clay loam soils east of the Napa River. He found that the Bale soils contained 0.08–0.11 inches of available water per inch of soil, while the Cole soils contained 0.16–0.21 inches of water per inch of soil, approximately double the water-holding capacity. Mr. Nagoaka concluded that “[v]iticulturally, the management of vineyards west and east of the river is profoundly influenced by the different soil types and their characteristics.” (Petition, p. 50).

d. Northern Boundary. The public hearing and subsequent comments produced much conflicting evidence as to classification of the soils in the proposed northern extension. Based upon the following evidence, however, ATF has concluded that the soils in the northern extension are more similar to the soils in the area proposed in Notice NO. 620 than to the area to the north of the Yountville Cross Road. The following evidence was considered by ATF:

i. Elliott-Fisk Geography Report. At the hearing, Professor Deborah Elliott-Fisk, an Assistant Professor, Department of Geography, University of California, Davis, testified on behalf of Group A. Professor Elliott-Fisk stated, on the basis of soil samples taken in the area north of the Yountville Cross Road, that she believed that the soils south of the Yountville Cross Road had been incorrectly mapped as Bale clay loam on SCS maps. (Tr. Vol. I, p. 94–95).

Professor Elliott-Fisk conceded, however, that she had not taken any soil samples from the area south of the Yountville Cross Road. In their post-hearing brief, Group A summarized the findings of Professor Elliott-Fisk, as follows:

The vineyard area within (the proposed) Stags Leap District, which once served as the channel of the Napa River, contains alluvial sub-soils derived from volcanic and sedimentary bedrock and from Napa River deposits. These soils have never been covered by fan deposits and are fine, well-weathered and well-drained. By contrast, the sub-soils of the areas north and south of (the proposed) Stags Leap District are comprised of more recent deposits of the well-defined Rector Canyon Fan and Soda (Canyon) Creek Fan, respectively. (Hearing Comment 84, p. 11).

Professor Elliott-Fisk stated that the beginning of the Rector Canyon Fan abutted the northern edge of the hills which were proposed as the northern boundary of Stags Leap District. She stated that the Soda Canyon Fan began at approximately the southern boundary

of the proposed viticultural area. (Tr. Vol. I, p. 98; Hearing Exhibit 6).

In support of the above conclusions, Professor Elliott-Fisk stated that (subsequent to the hearing) she had sampled and analyzed soils from both within and outside of the proposed viticultural area. The samples within the proposed viticultural area were taken from the Egan property (just south of the northern hills), and the Silverado Vineyards property (just inside the proposed western boundary, east of the Napa River). Samples were also taken from the Simonson property in the northern extension (just north of the proposed northern boundary, and south of the Yountville Cross Road), and from another Egan property (just north of the Yountville Cross Road, and west of State Lane), and from two sites just south of the proposed southern boundary of Stags Leap District (Shafer Winery's Oak Knoll vineyard).

In her report (Hearing Comment 113), Professor Elliott-Fisk noted that her analyses of the above-mentioned samples indicated the following:

(a) The soils on the properties of Simonson (located in the northern extension), and Egan (located just north of the Yountville Cross Road), were both formed on the Rector Canyon Fan; however, the Egan soil is “at the outer margin of the Rector Canyon Fan and the outer margin of the Napa River flood-plain/historic terrace.” (Hearing Comment 113, p. 6).

(b) The soil on the Egan property within the proposed Stags Leap District is on the old (former) Napa River channel;

(c) The Silverado Vineyards property shares soil similarities with the more central portion of the proposed Stags Leap District, and;

(d) The soils on the Shafer property, just south of the proposed viticultural area, are on the Soda Canyon Fan.

Group A also contended that the different sub-soil profiles and compositions “are particularly relevant viticulturally because grape vines typically root in the sub-soil, not just the topsoil.” (Hearing Comment 84, p. 11).

ii. Zinke Geography Report. In its post-hearing comment (Hearing Comment 101), S. Anderson Vineyard included a soils report prepared by Professor Paul Zinke, a professor in the Department of Forestry, University of California, Berkeley. Professor Zinke concluded, on the basis of observations he made while visiting the proposed Stags Leap District and its surrounding area, a review of various soil surveys, soil maps and topographical maps, and soil samples taken on a second visit to the proposed viticultural area, that the

soils of the Stags Leap District (including the northern extension), are consistent throughout the properties stretching from a line following the small drainage channel approximately parallel to and immediately north of the Yountville Cross Road, west of the Silverado Trail, south to a point near the Chimney Rock Golf Course. He found that:

The distinctive soil aspect of the Proposed Stags Leap District, including the Northern Extension, is a catena or topographic sequence of soils beginning in the east with a terrace against the base of the Stags Leap Ridge at an elevation of approximately 200 feet, continuing with an alluvial fan on which soils of the Bale series occur, then to the lower end where the fan buries deposits of the Napa River in the west. These distinctive combinations of soils occur several places in the Stags Leap District from immediately north of the Yountville Cross Road to near the Chimney Rock Golf Course. (Hearing Comment 101, Zinke Report, p. 1).

Professor Zinke stated that the Rector Creek (Canyon) Fan begins at a drainage ditch which is approximately parallel to, and just north of the Yountville Cross Road. According to Professor Zinke:

This is the line where the soils change from those of the Stags Leap District to the coarser soils of the Rector Creek Fan. North of this drainage ditch the soils begin to be dominated by the Rector Creek alluvial fan. (Hearing Comment 101, Zinke Report, p. 8).

SCS and USGS Reports. ATF was thus presented with conflicting reports from two experts in the field as to the characteristics of the soils in the northern extension. Both Professors Elliott-Fisk and Zinke acknowledged the presence of a Rector Canyon (Creek) Fan, and believed that Rector Canyon soils were different from Stags Leap District soils. However, whereas Professor Elliott-Fisk believed that the Rector Canyon Fan begins at the northern hills at the northern boundary of the proposed viticultural area, Professor Zinke believed that it began some 500 yards north of the hills, on the north side of the Yountville Cross Road.

The evidence submitted led ATF to the conclusion that the soils and subsoils were the primary geographical feature that distinguished the Stags Leap District from surrounding areas. In order to better evaluate the conflicting expert evidence which had been submitted on the issue of soils, ATF forwarded copies of the reports of Professors Elliott-Fisk and Zinke to the United States Geological Survey (USGS) for their review and response.

By letter dated May 16, 1988, the SCS responded to ATF's request. (Requested

Information 5). The SCS was unable to reach any definitive conclusions from the evidence before it, but did address Professor Elliott-Fisk's assertion that the soils in the northern extension had been incorrectly classified on the SCS map. The SCS included with its response an internal memorandum, dated May 5, 1988, which stated that almost all soil delineations contain small areas of other soils, often quite contrasting soils, which are called "inclusions." The letter stated that "it is important to note that the sample sites in her (Professor Elliott-Fisk's) report do not necessarily confirm that Bale soils similar to those described south of the 'Rector Canyon Fan' line do not exist within the northern extension proposed by Zinke."

By letter dated June 9, 1988, the USGS submitted its review of the data. (Requested Information 7). The letter noted that the reviewer was merely analyzing the reports, and did not have the advantage of a field review, detailed photographic review, or review of the data collected by either consultant. The reviewer concluded that there were reasonable arguments and data to support either position of the northern boundary.

The USGS reviewer noted the heterogeneity of soil types within the proposed Stags Leap District. (As previously mentioned, of the 31 soil series present within Napa County, approximately 45% of these are found in the viticultural area.) Thus, because of the diversity of soil types, the USGS believed that it was important to ascertain whether the soils in the northern extension were similar to those in the proposed viticultural area, or uniquely different.

In addition, the USGS believed it important to determine whether the soils in the northern extension were more like the Rector Canyon (Fan) deposits and soils than the Stags Leap District soils since, as previously noted, both Professors Elliott-Fisk and Zinke believed that Rector Canyon soils were different from Stags Leap District soils.

The USGS concluded that, in their opinion, there was insufficient data available to argue that the soils in the northern extension (south of the Yountville Cross Road) are significantly different from those within the proposed Stags Leap District. Further, the USGS opined that a more detailed study could conclude that the soils in the northern extension are transitional to both the Rector Canyon Fan and the Stags Leap materials. In any event, based on the available data, the USGS concluded that the soils in the northern extension appear to be more similar to the soils within the proposed viticultural area

than to the soils north of the Yountville Cross Road.

Although the USGS stated that it could not recommend that a solely geologic, geomorphologic, or soils basis be used to determine the northern boundary of the district, the Bureau would note that viticultural area boundaries are not based solely on geographical features.

On the basis of geographical criteria, ATF finds that the area within the proposed Stags Leap District and the area within the northern extension are not distinguishable from one another. The evidence indicates that the climate, soil, precipitation, etc. within the area proposed by Group A, and the area within the northern extension proposed by Group B, are virtually the same. Although there are differences, ATF finds that there is insufficient evidence to indicate that these differences distinguish the proposed areas from one another.

ATF finds that the weight of the evidence supports the SCS map's classification of the soils in the northern extension as being predominantly Bale clay loam. Further, ATF finds that the evidence supports the conclusion of the USGS that the soils within the northern extension are more similar to the soils found in the proposed Stags Leap District than to the soils found north of the Yountville Cross Road. Therefore, ATF concludes, based on the evidence, that the northern extension area is distinguished by viticultural features from the remaining surrounding areas.

In summation, ATF finds that the boundaries proposed by Group B satisfy the criteria of 27 CFR 4.25a(e)(2)(iii) by encompassing an area that possesses generally homogeneous viticultural features different from surrounding areas which are distinguished by geographical features.

VI. Final Rule—Boundary Modifications

Based on the evidence in the rulemaking record, with the exception of the northern boundary, ATF is adopting the boundaries of the Stags Leap District viticultural area as proposed in Notice No. 620. ATF finds that the evidence submitted by Group B satisfies the criteria specified in § 4.25a(d)(2) of the regulations, and the northern boundary of the Stags Leap District viticultural area as proposed in Notice No. 620 is, therefore, modified to extend to the Yountville Cross Road.

VII. Boundaries of the Area

The boundaries of the Stags Leap District viticultural area may be found on one United States Geological Survey (U.S.G.S.) map of the 7.5 minute series,

titled Yountville, California. The boundaries are described in § 9.117.

VIII. Additional Information

A. Miscellaneous

ATF does not want to give the impression that, by approving "Stags Leap District" as a viticultural area, it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct, but not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and in advertisements as to the origin of the grapes. Any commercial advantage can only come from consumer acceptance of "Stags Leap District" wines.

B. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule 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 final rule will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12291

In compliance with Executive Order 12291, the Bureau has determined that this regulation 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.

D. 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.

E. Disclosure

A copy of the petition (and amendments), the hearing transcript and exhibits, and the comments received are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4412, Disclosure Branch, 1200 Pennsylvania Avenue, NW., Washington, DC.

F. Drafting Information

The principal author of this document is James P. Ficaretta, 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, and Wine.

IX. Authority and Issuance

Par. 1. The authority citation for 27 CFR Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

PART 9—AMERICAN VITICULTURAL AREAS

Par. 2. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the heading of § 9.117 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.
* * * * *
9.117 Stags Leap District.
* * * * *

Par. 3. Subpart C is amended by adding § 9.117 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.117 Stags Leap District.

(a) *Name.* The name of the viticultural area described in this section is "Stags Leap District."

(b) *Approved map.* The appropriate map for determining the boundaries of the Stags Leap District viticultural area is one U.S.G.S. topographic map in the 7.5 minute series, scaled 1:24000, titled "Yountville, Calif.," 1951 (photorevised 1968).

(c) *Boundaries.* The Stags Leap District viticultural area is located in Napa County, California, within the Napa Valley viticultural area. The boundaries are as follows:

(1) Commencing at the intersection of the intermittent stream (drainage creek) with the Silverado Trail at the 60 foot contour line in T6N/R4W, approximately 7 miles north of the city of Napa.

(2) Then southwest in a straight line, approximately 900 feet, to the main channel of the Napa River.

(3) Then following the main branch of the Napa River (not the southern branch by the levee) in a northwesterly then northerly direction, until it intersects the medium-duty road (Grant Bdy) in T7N/R4W, known locally as the Yountville Cross Road.

(4) Then northeast along the Yountville Cross Road until it intersects the medium-duty road, the Silverado Trail.

(5) Then north along the Silverado Trail approximately 590 feet to a gully entering the Silverado Trail from the east.

(6) Then northeast along the center line of that gully, approximately 800 feet, until it intersects the 400 foot contour line in Section 30 of T7N/R4W.

(7) Then in a generally southeast direction, following the 400 foot contour line through Sections 29, 32, 33, 4, and 3, until it intersects the intermittent stream in the southwest corner of Section 3 in T6N/R4W.

(8) Then in a generally southwest direction along that intermittent stream to the beginning point, at the intersection with the Silverado Trail.

Signed: December 20, 1988.

Stephen E. Higgins,
Director.

Approved: January 6, 1989.

John P. Simpson,
Deputy Assistant Secretary (Regulatory,
Trade and Tariff Enforcement).

[FR Doc. 89-1841 Filed 1-26-89; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Department of the Army

35 CFR Part 253

Regulations of the Secretary of the Army (Panama Canal Employment System); Employment Policy

AGENCY: Department of the Army, Defense.

ACTION: Final rule.

SUMMARY: The final rule removes language in § 253.8 of title 35, Code of Federal Regulations, which had previously excluded bureau directors and heads of independent units of the Panama Canal Commission from eligibility for the overseas recruitment or retention differential authorized by section 1217 of the Panama Canal Act of 1979. The removal of this exclusionary language allows these Commission

officials to receive the appropriate differential. The revisions also reflect changes in titles and positions within the Commission.

EFFECTIVE DATE: January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, 2000 L Street NW., Washington, DC 20036-4996 (Telephone: 202-634-6441) or Mr. John L. Haines, Jr., General Counsel, Panama Canal Commission, APO Miami 34011-5000 (Telephone in Balboa Heights, Republic of Panama: 011-507-52-7511).

SUPPLEMENTARY INFORMATION: Issuance of a notice of proposed rulemaking under 5 U.S.C. 553 is not necessary because this final rule pertains only to personnel of agencies covered by these regulations. Section 1217 of the Panama Canal Act of 1979 (22 U.S.C. 3657), authorizes the head of the Panama Canal Commission to pay an overseas recruitment of retention differential to eligible employees. In addition to the statutory requirements of the Act, agency regulations published at 35 CFR 251.31 (tropical differential) and 35 CFR 251.32 (Panama Area differential) contain requirements governing eligibility for the differentials. Bureau directors and heads of independent units of the Panama Canal Commission, however, are not covered by either the statute or the regulations due to the exclusionary language of 35 CFR 253.8(d). The final rule reflects the Commission's desire that these Commission officials receive the appropriate differential as do other Commission employees.

The final rule revises § 253.8(d) to apply the provisions of 22 U.S.C. 3657, 35 CFR 251.31 and 251.32, except for §§ 251.31(b)(4) and 251.32(b)(2) to bureau directors and heads of independent units. Accordingly, the bureau directors and heads of independent units may receive the differential subject to the same eligibility requirements as other Commission employees, except that these officials will not be subject to the provisions of §§ 251.31(b)(4) and 251.32(b)(2), which limit payment of the differential to an amount which, when combined with basic compensation, does not exceed the current rate of step 5, GS-17 of the General Schedule set out in 5 U.S.C. 5332(a). In other words, bureau directors and heads of independent units will not be subject to the step 5, GA-17 limitation, but rather, will receive, in addition to basic compensation, the appropriate differential regardless of the amount of