

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 639]

Wild Horse Valley Viticultural Area; California

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 the mountains between Napa and Solano Counties, California, to be known as Wild Horse Valley. The proposed viticultural area is located just five miles east of the City of Napa. It contains vineyards in both Napa and Solano Counties. The petition was submitted by John Newmeyer of Napa and four other interested persons. ATF believes that 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 identify the wines they may purchase. The establishment of viticultural areas also allows wineries to further specify the origin of wines they offer for sale to the public.

DATE: Written comments must be received by November 2, 1987.

ADDRESS: 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. 639) Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, FAA, 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:

Background

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

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguished 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. 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 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. maps with the boundaries prominently marked.

Petition

ATF has received a petition proposing a viticultural area encompassing a valley near Napa, California,

approximately five and one-third miles long and one and two-thirds miles across at its widest point. The total area of the proposed viticultural area is 3,300 acres or 5.16 square miles. Currently there are seventy-three acres of winegrapes in the proposed Wild Horse Valley viticultural area. According to the petitioner, recent studies of other sites in the area indicate the feasibility of more than tripling the number of acres planted to winegrapes, and additional plantings are being considered. There are currently no bonded wineries in the proposed viticultural area, but two small wineries are planned. According to the petitioner, the first winery will begin operation for the crush of 1987 or 1988.

The petitioner claims that because of its proximity to San Francisco Bay and its elevation, the viticultural conditions in Wild Horse Valley are different from grape-growing conditions in other valleys in the eastern coast ranges of Napa County, such as Wooden, Gordon, Pope, Foss and Chiles Valleys, which tend to be more continental in climate, as well as more fertile. The petitioner claims that Wild Horse Valley's soils, climate, and elevations are also different from the nearby Green Valley in Solano County (known as Solano County Green Valley) and the adjacent Coombsville area of Napa Valley. According to the petitioner, the long growing season of the proposed Wild Horse Valley, its rocky soil, and windy conditions produce grapes that are well-suited to winemaking.

Location Compared To American Viticultural Areas

The proposed viticultural area is within the North Coast viticultural area. The proposed area partially overlaps the Napa Valley and Solano County Green Valley viticultural areas. The Suisin Valley viticultural area is approximately 2.5 miles east of the proposed Wild Horse Valley. It is separated from the proposed viticultural area only by the Solano County Green Valley viticultural area.

Evidence of Name

According to the petitioner, the name Wild Horse Valley is well documented. The petitioner provided references to books identifying the area as Wild Horse Valley as early as 1866. According to early accounts, wild horses

roamed the area during that period, thus the intriguing name Wild Horse Valley was coined.

Today, the name Wild Horse Valley is found on U.S.G.S. maps and on Napa County road maps. One of the two roads leading to the valley is named "Wild Horse Valley Road," and a creek flowing from the southeast portion of the valley into Solano County Green Valley, is named "Wild Horse Creek."

According to the petitioner, the large, locally known horse ranch and equestrian center, Wild Horse Valley Ranch, located at the north end of the valley, has given the name ample publicity in recent years.

The petitioner claims that the first vineyard used for wine production in Wild Horse Valley was that of Joseph Vorbe who in 1881 had 50 acres. The wine historian, William F. Heintz, published a report entitled, "Wild Horse Valley's Viticultural History." Part of the report includes a transcript of an interview with a long time Napa resident conducted by Mr. Heintz on July 28, 1986. The transcript of the interview was included with the petition. The interview describes the historical use of the name Wild Horse Valley, as well as its viticultural significance.

Evidence of Boundaries

According to the petitioner, the boundaries of the Wild Horse Valley are defined by the natural terrain of the area. This hilly upland valley is rimmed by higher peaks on all sides. In its center are two large man-made lakes which supply water to the City of Vallejo. To the west, south, and southeast, mountainous terrain soon gives way to alluvial plains. To the north and northeast the terrain is ruggedly mountainous.

For ease of definition, the petitioner drew the boundary of the proposed viticultural area with straight lines for the most part, connecting prominent peaks surrounding the valley. According to the petitioner, this approximation is quite accurate, enclosing the area which has been historically known as Wild Horse Valley.

Geographical Evidence

Climate and Elevation

The petitioner claims that the valleys in the coast ranges east of Napa Valley generally tend to have a drier, more continental climate than the Napa Valley floor and vineyard sites in the mountains to the west. Many factors, including distance from sources of marine air, sunny exposure, and heat-absorbing rocky outcroppings,

contribute to warmer summertime temperatures. The petitioner believes that because of its location, Wild Horse Valley is an exception to this generalization.

The petitioner states that the area of southern Napa Valley and Wild Horse Valley have lower annual temperatures and smaller annual temperature ranges as compared with the northern Napa Valley and most of the eastern Coast Ranges of Napa County, which have higher annual temperatures and larger annual temperature ranges.

According to the petitioner, Wild Horse Valley's southerly location near San Pablo and Suisun Bays expose it to cool westerly winds blowing in from the ocean and the bay, especially in spring and summer. The petitioner claims that its proximity to the Carquinez Straits and its unprotected position rising out of bayshore flatlands on two sides make Wild Horse Valley an unusually windy location. The California Energy Commission Wind Resource Map (submitted by the petitioner) depicts Wild Horse Valley to be on the edge of a zone where wind speeds average eleven to fourteen miles per hour. According to the petitioner, the effect of its windy location is enhanced by its elevation. Diurnal local winds created by the sun's warming of the ground tend to flow upslope or upcanyon during the day. This air movement combines with the marine breezes blowing in the same direction to make Wild Horse Valley windier than the lower elevation of the Coombsville district of Napa Valley to the west, and the more inland coast range mountains and valleys to the north, and the more sheltered Solano County Green Valley viticultural area. Generally speaking, those surrounding areas have wind speeds averaging less than eleven miles per hour.

The petitioner contends that the proposed viticultural area also enjoys longer hours of sunlight than Coombsville and Green Valley. The petitioner says that summer fogs that blanket the lower elevations in the evening and early morning often stop below the altitude of Wild Horse Valley. Early mornings in the Wild Horse Valley are clear and bright. Around nine in the morning the fog will sometimes rise briefly into the valley as it warms and dissipates. In spite of the longer period of daylight, Wild Horse Valley's customary cool winds keep afternoon temperatures low. A thermograph study done in 1965 at the ranch of James Birkmyer in the north end of the valley indicated that this site has a Region I climate (less than 2,500 degree days) as classified by the University of California at Davis system of heat summation.

According to the petitioner, the experience of growers in Wild Horse Valley confirms that the growing season climate is cool. James Birkmyer's twenty-two year old plot of Johannisberg Riesling on his ranch in the proposed viticultural area consistently ripens late with high acid levels at the end of September or beginning of October. The petitioner claims the climate of the proposed Wild Horse Valley viticultural area and the overlapping Solano County Green Valley are different. Available thermograph studies (1973-74) of Solano County Green Valley, places the climate in mid-Region III. In contrast, available thermograph data (1965), places Wild Horse Valley's climate in Region I. Solano County Green Valley is more sheltered and on the average, warmer than Wild Horse Valley. This is in part due to the simple difference in elevation. When air rises, in general it expands and cools at the rate of about five and one-half degrees Fahrenheit per thousand feet.

The elevation of the proposed viticultural area is generally higher than the surrounding valleys. Wild Horse Valley's elevation ranges from 1,000 to 2,000 feet above sea level.

Many areas of Solano County Green Valley have much lower elevations than the proposed area ranging from 400 to 800 feet above sea level. Because of the difference in elevation, fog is more prevalent in Solano County Green Valley than in Wild Horse Valley. The average annual rainfall in Solano County Green Valley is twenty to twenty-five inches per year. Over the last twenty years the rainfall in Wild Horse Valley has averaged thirty-two inches per year.

Soils

The soils in Wild Horse Valley also set it apart from neighboring vineyard districts. The soils in Wild Horse Valley are primarily shallow, well-drained, sloping stony loams of the Hambright-Toomes association found only in mountainous uplands. Specific soil types include Hambright, Toomes, Gilroy, Coombs, Sobrante and Trimmer loams. Vineyards in Wild Horse Valley have been established on Hambright and Trimmer soils. The petitioner's research has established that Wild Horse Valley has the only vineyard planted on Trimmer soil in either Napa or Solano Counties. The soil in the overlapping Solano County Green Valley is primarily Conejo clay loam, a nearly level, deep, fine-textured alluvial soil found only at low elevations. Soil in the nearby Coombsville district of Napa Valley

immediately west of Wild Horse Valley consists of Coombs loam with areas of Kidd, Haire, Forward, and Sobrante soils. The soils found in other Napa County grape-growing areas to the north and east are primarily Yolo loam, Pleasanton loam, Diablo clay and Millsholm loam in the Cappel Valley. In Foss Valley they consist of Maxwell clay, Bale clay loam and Aiken loam. In Gordon Valley they are mostly Bale clay loam, Cole silt loam, Yolo loam and Bressa-Dibble complex. In the Wooden Valley they mostly are Bale clay loam, Sobrante loam, Cole silt loam, Hair clay loam, Diablo clay, Clear Lake clay, Bressa-Dibble complex. In Chiles Valley they are primarily Pleasanton loam, Perkins gravelly loam, Henneke gravelly loam, Tehema silt loam, Maxwell clay, and Bressa-Dibble complex. In Pope Valley the soils consist primarily of Pleasanton loam, Perkins gravelly loam, Henneke gravelly loam, Tehema silt loam, Maxwell clay and Bressa-Dibble complex.

Conclusion

The petitioner believes that the Wild Horse Valley is a unique and distinctive grape-growing area. Historically considered a "tributary" of the Napa Valley, it has again earned a reputation in modern times for producing quality winegrapes. However, this single geographical area has lost its historic identity, because it is split by the political boundary between two counties (Napa and Solano) into two separate viticultural areas. The petitioner believes Wild Horse Valley's establishment as an American viticultural area and subsequent use as an appellation on wine labels will enable this small area to preserve its heritage as an established grape-growing and wine producing region. Based on the petitioner's evidence provided in this notice, it is the petitioner's opinion that the proposed Wild Horse Valley viticultural area defines a region with unique climate and growing conditions different from the surrounding areas.

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 notice of proposed rulemaking because the proposal is not expected: (1) To have significant secondary or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact nor compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the 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 34, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirements to collect information are proposed.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. The document proposes possible boundaries for the viticultural area named "Wild Horse Valley." However, comments concerning other possible boundaries or names for this viticultural area will be given full consideration.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material in 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 comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested 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 Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

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

List of Subjects in 27 CFR Part 9

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

Authority and Issuance

27 CFR Part 9—*American viticultural areas*, is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for Part 9 continues to read as follows:
Authority: 27 U.S.C. 205.

Par. 2. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.124 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *
9.124 Wild Horse Valley.

Par. 3. Subpart C is amended by adding § 9.124 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.124 Wild Horse Valley.

(a) *Name.* The name of the viticultural area described in this section is "Wild Horse Valley."

(b) *Approved map.* The appropriate map for determining the boundaries of the "Wild Horse Valley" viticultural area is one U.S.G.S. Quadrangle (7.5 Minute Series) map. It is titled Mt. George, California (1951), photorevised 1968.

(c) *Boundaries.* The boundaries of the proposed Wild Horse Valley viticultural area (in Napa and Solano Counties) are as follows:

(1) The beginning point is on the section line boundary between section 33, Range 3 West, Township 6 North and section 4, Range 3 West, Township 5 North, Mount Diablo Range and Meridian, marked with an elevation of 1,731 feet, which is a northwest corner in the boundary between Napa and Solano Counties.

(2) From the beginning point, the boundary runs in a north-northeasterly direction approximately .9 mile to the

summit of an unnamed hill having a marked elevation of 1,804 feet.

(3) Then northeasterly approximately .7 mile to the summit of an unnamed hill having a marked elevation of 1,824 feet;

(4) Then south-southeasterly approximately .6 mile to the summit of an unnamed hill having a marked elevation of 1,866 feet;

(5) Then south-southeasterly approximately .5 mile to the summit of an unnamed hill having a marked elevation of 2,062 feet;

(6) Then southerly approximately .7 mile to the summit of an unnamed hill having a marked elevation of 2,137 feet;

(7) Then south-southeasterly approximately .4 mile to the summit of an unnamed hill having a marked elevation of 1,894 feet;

(8) Then southerly approximately 2.3 miles to the midpoint of the section line boundary between sections 15 and 22, Township 5 North, Range 3 West, Mount Diablo Range and Meridian;

(9) Then southwesterly approximately 1.3 miles to the summit of an unnamed hill having a marked elevation of 1,593 feet;

(10) Then west-northwesterly approximately 1.2 miles to the summit of an unnamed hill, on the Napa/Solano County boundary, having a marked elevation of 1,886 feet;

(11) Then north-northeasterly approximately 1.5 miles to the summit of an unnamed hill having a marked elevation of 1,351 feet;

(12) Then north-northeasterly approximately 1.2 miles to the summit of an unnamed hill having a marked elevation of 1,480 feet; and

(13) Then north-northwesterly approximately 1.0 mile to the point of beginning.

Approved: August 31, 1987.

Stephen E. Higgins,

Director.

[FR Doc. 87-21141 Filed 9-15-87; 8:45 am]

BILLING CODE 4810-31-M

27 CFR Part 9

[Notice No. 641]

Cayuga Lake Viticultural Area

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in New York State, within the counties of Seneca, Tompkins, and Cayuga, to be known as

"Cayuga Lake." This proposal is the result of a petition submitted by Douglas and Susanna Knapp (Knapp Farms, Inc.) and Robert Plane (Plane's Cayuga Vineyard, Inc.), whose wineries are located within the proposed area. ATF believes that 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 identify the wines they purchase.

DATE: Written comments must be received on or before October 16, 1987.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385, Attn: Notice No. 641.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, FAA, 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:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow 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 an appellation 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, 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. 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 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 with the boundaries prominently marked.

Petition

ATF has received a petition proposing a viticultural area in New York State, surrounding and adjacent to Cayuga Lake, within the counties of Seneca, Tompkins, and Cayuga, to be known as "Cayuga Lake." The proposed area, located north of the city of Ithaca, between Seneca Lake and Owasco Lake, includes eight bonded wineries and 18 vineyards, with approximately 460 acres of grapes. Further, the proposed area is situated within the approved Finger Lakes viticultural area.

According to the petitioners, historical and current evidence regarding the name as well as the boundaries of the proposed area include the following:

(a) The body of water called Cayuga Lake received its name from the Cayuga Indians, who originally inhabited the region bordering the lake.

(b) The name figures prominently in identifying the area in the diaries of General Sullivan during his campaign to open land in upstate New York to settlers in the 1700's.

(c) Cayuga Lake is the name used by the first permanent settlers in Seneca County in 1789, and has remained the same to the present time.

(d) The large state park located in the northern section of the proposed viticultural area is named Cayuga Lake State Park.

(e) State Route 89, which runs the length of the proposed viticultural area, is also known as Cayuga Lake Boulevard.

Geographical features of the proposed Cayuga Lake viticultural area include the following:

(a) Bedrock of different kinds is the main source of soil material in New York State. Within the proposed Cayuga Lake viticultural area, the bedrock is predominantly shale. To the north of the proposed area, it is alternating limestone and slate formations, and to the south, it is interbedded sandstone and shale.

(b) The maximum elevation within the proposed area is no more than 800 feet above the surface of Cayuga Lake. The elevation of the areas to the east, west,