

**SUPPLEMENTARY INFORMATION:****Background**

The current port limits of Memphis, Tennessee are described in Treasury Decision (T.D.) 84-126, signed May 14, 1984, and published in the **Federal Register** (49 FR 22629) on May 31, 1984, as encompassing the corporate limits of the city of Memphis, Tennessee and all the territory within the limits of Shelby County, Tennessee.

Recently, northern Mississippi has experienced marked business expansion and population growth. Currently, businesses located in northern Mississippi utilize the nearest port of entry at Memphis, Tennessee, and the port limits of Memphis do not extend beyond the Tennessee border.

In order to facilitate economic development in northern Mississippi, and provide convenience and improved service to carriers, importers, and the general public, Customs and Border Protection (CBP), in a document published in the **Federal Register** (69 FR 2092) on January 14, 2004, proposed to extend the port limits of the port of Memphis, Tennessee, to include all of the territory within the limits of DeSoto County, northern Mississippi. The document proposed to amend § 101.3(b)(1) of the CBP Regulations if a determination was made to proceed with the expansion of the port limits.

**Adoption of Proposal as Final Rule**

Comments on the proposed amendment to the CBP Regulations were solicited. Five comments were submitted within the designated comment period. Each of the comments supported the proposed extension of the port limits and agreed that it will facilitate economic development in northern Mississippi. Upon further consideration of the matter, CBP has decided to adopt the proposal as published on January 14, 2004.

**New Port Limits of the Port of Memphis, Tennessee**

Accordingly, CBP is amending § 101.3(b)(1) of the CBP Regulations to reflect that the new limits of the port of entry of Memphis, Tennessee are as follows:

The corporate limits of Memphis, Tennessee and all of the territory within the limits of Shelby County, Tennessee and DeSoto County, Mississippi.

**Authority**

This change is being made under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

**Regulatory Flexibility Act and Executive Order 12866**

Although CBP solicited public comments, notice and public procedure was not required pursuant to 5 U.S.C. 553 because this document relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Office of Management and Budget has determined this rule to be non-significant under Executive Order 12866.

**Drafting Information**

The principal author of this document is Kevin J. Fandl, Attorney, Office Regulations and Rulings, Customs and Border Protection. However, personnel from other Bureau offices participated in its development.

**List of Subjects in 19 CFR Part 101**

Customs duties and inspection, Organization and functions (Government agencies), Customs ports of entry, Exports, Imports.

**Amendment to the Regulations**

■ For the reasons stated above, part 101 of the CBP Regulations (19 CFR part 101) is amended as follows:

**PART 101—GENERAL PROVISIONS**

■ 1. The general authority citation for part 101 and specific authority provision for § 101.3 continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

\* \* \* \* \*

**§ 101.3 [Amended]**

■ 2. In the list of ports table in § 101.3(b)(1), under the state of Tennessee, in the "Limits of port" column adjacent to "Memphis" in the "Ports of entry" column, remove the entry "(Restated in T.D. 84-126)" and add in its place "CBP Dec. 04-22".

Dated: July 6, 2004.

**Robert C. Bonner,**

*Commissioner, Customs and Border Protection.*

**Tom Ridge,**

*Secretary, Department of Homeland Security.*

[FR Doc. 04-15680 Filed 7-9-04; 8:45 am]

**BILLING CODE 4820-02-P**

**DEPARTMENT OF THE TREASURY****Alcohol and Tobacco Tax and Trade Bureau****27 CFR Part 9**

[T.D. TTB-15; Re: ATF Notice No. 961]

RIN 1513-AA33

**Establishment of the Red Hills Lake County Viticultural Area (2001R-330P)**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** This Treasury decision establishes the Red Hills Lake County viticultural area in Lake County in northern California. This new viticultural area is entirely within the Clear Lake viticultural area, which is, in turn, within the larger multi-county North Coast viticultural area. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** Effective September 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** N. A. Sutton, Program Manager, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau; telephone 415-271-1254.

**SUPPLEMENTARY INFORMATION:****Background on Viticultural Areas***TTB Authority*

Section 205(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

*Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical

features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

#### Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

#### Notice of Proposed Rulemaking

##### Background

In 2001, the Bureau of Alcohol, Tobacco and Firearms (ATF), the predecessor to TTB, received a petition proposing a new viticultural area to be called "Red Hills" in Lake County, California, about 80 miles north of San Francisco. Sara Schorske of Compliance Service of America filed the petition on behalf of a group of Lake County grape growers. Also in 2001, ATF received a separate petition to establish the "Red Hill" viticultural area in Douglas County, Oregon. ATF published notices of proposed rulemaking regarding the two proposed viticultural areas in the **Federal Register** on October 30, 2002—Notice No. 960 for Red Hill (Oregon) and Notice No. 961 for Red Hills (California).

The two notices discussed the possible name confusion between the proposed Red Hills (plural) and Red Hill (singular) viticultural areas. As a remedy, ATF proposed to link the proposed areas' names to the State in which they were located and suggested the use of "Red Hills—California" and "Red Hill—Oregon." The two notices requested comments from all interested persons by December 30, 2002, and both stated:

Specifically, ATF requests comments on the potential for name confusion between the [two proposed areas]. \* \* \* Comments on the proposed names and suggestions for other names are encouraged and will be given consideration.

Based on an industry request for additional time, ATF reopened the comment periods for both proposed areas until March 17, 2003. (See Notice No. 966, published in the **Federal Register** on January 16, 2003.) Comments received in response to Notice No. 960, Red Hill—Oregon will be discussed in a separate rulemaking document.

#### Comments, Evidence and TTB Responses

TTB received 14 comments regarding the proposed Red Hills—California viticultural area in response to Notice No. 961. One comment opposed the area's establishment. Thirteen comments supported it, and some of these comments recommended modifications to its name or proposed boundaries. We discuss the comments received regarding the area, its name, and its boundaries in detail below.

##### Opposing Comment

The owner of the "Red Hill Vineyard" trademark opposed the proposed Red Hills—California (Notice No. 961) and the Red Hill—Oregon (Notice No. 960) viticultural areas and stated:

We are concerned that there will exist confusion with the appellation Red Hill or Red Hills and our brand Red Hill Vineyard that is located in neither of the proposed appellations. \* \* \* We are concerned that the confusion of a brand name and a viticultural region would be similar to the confusion with the Napa appellation and the Napa Ridge brand. To avoid such confusion, we respectfully protest the appellation designations in Notice 961 and 960 so long as we own this Mark.

TTB's response to this comment is discussed in detail below.

##### General Supporting Comments

The five members of the Lake County Board of Supervisors signed a letter in support of the Red Hills viticultural area petition. In addition, TTB received four

separate letters from wine industry members in support of the Red Hills petition. The supporting letters stated that the Red Hills area is a unique grape-growing region with distinctive soils and a distinctive microclimate.

##### Red Hills—Name Change and Evidence

##### "Red Hills—California" Name Comments

We received 4 comments proposing changes to the area's suggested name of "Red Hills—California." Three comments strongly opposed the use of "California" as part of the viticultural area's name. Ms. Barbara Snider of Snider Vineyards stated:

[A] wine using the more generic state designation, "California," suggests to the consumer that the grapes used to make the wine could be grown anywhere in the State, and many times, grown in many different areas of the State and blended.

Another commenter asked, "How about making the [proposed area] 'possessive' of the State in which it lies? [*i.e.*] Red Hills of California \* \* \*."

The petitioning group also opposed the linking of "California" with the Red Hills name, believing this would mislead consumers since California is such a large State with a wide variety of grape growing conditions. The group stated:

We have invested substantial effort and expense to establish a small, premium vineyard area as an [American viticultural area]. \* \* \* To prominently associate the area with the name California dilutes the area's identity.

The petitioning group argued in a second letter that, "'California' as a modifier will not be specific enough to distinguish our area from other possible grape growing areas," including, they noted, other possible "Red Hills" areas within California.

The petitioning group at first suggested "Red Hills District" as the appropriate name for the petitioned viticultural area, and they provided examples of this name's usage. Later, during the reopened comment period, the petitioning group suggested the use of "Red Hills Lake County" for the area. Ms. Snider, who had suggested "Red Hills—Lake County" in her first comment, added her support for "Red Hills—Lake County" as the appropriate name for this viticultural area.

##### Red Hills Lake County Name Evidence

Arguing that Red Hills Lake County was "the best and most logical name for the proposed appellation," the petitioners included substantive name evidence with their request showing links between the "Red Hills" and

“Lake County” names. For example, Vineyard and Winery Management magazine’s November/December 2002 issue included an article titled “Value Vineyards? Growers Bet on Future of Lake County.” The article included the subheadings “Red Hills for Red Wines” and “The Promising Red Hills,” and described the vineyards and virtues of the Red Hills region.

An article in the July 5, 2001, St. Helena Star titled “More Vineyards, Four More Wineries Slated for Lake County,” discussed vineyard acquisitions in the Red Hills area of Lake County. In February 1998, Wines and Vines magazine discussed the grape-growing qualities of Lake County in an article, “Red Soil, Red Grapes, But Not Red Ink,” which noted that an area ranch was “in the Red Hills area southwest of [Clear Lake].” The article quoted a vineyard supervisor who described the virtues of the soils and climate of the Red Hills.

The petitioners submitted other name evidence, including a 1977 description of the area’s “rolling red soil” by local historian Henry Mauldin. A 1949 account of the Red Hills walnut-growing region in Lake County shows its location on both sides of Red Hills Road within the viticultural area. Red Hills Road meanders through the area’s southwestern quadrant and is shown on a Rand McNally county map, the Lake County Travel Atlas, DeLorme’s Northern California Atlas, and in a published list of scenic roads in Lake County.

#### TTB Response to Name Comments

As discussed above, the original Red Hills petitioners suggesting modifying the petitioned name of their viticultural area to read “Red Hills Lake County.” They believe that by using “Lake County” in conjunction with “Red Hills,” rather than other modifiers such as “District” or “California,” they will be able to better identify this name as that of a well-defined region of Lake County in northern California. TTB agrees that the “Red Hills Lake County” name is generally recognized and finds that there is adequate evidence to support this name for the viticultural area.

#### TTB Response to Opposing Comment

The commenter who objected to the establishment of this area and the proposed Red Hill area in Oregon is a winery that holds the trademark “Red Hill Vineyard.” The proprietor is concerned that there will be confusion between the viticultural area(s) and the trademark, and stated:

We are concerned that there will exist confusion with the appellation Red Hill or Red Hills and our brand Red Hill Vineyard that is located in neither of the proposed appellations. Sebastiani has established the Red Hill Vineyard trademark at significant expense and would not be willing to relinquish our right to use without compensation for the mark. We are concerned that the confusion of a brand and a viticultural region would be similar to the confusion with the Napa appellation and the Napa Ridge Brand. To avoid such confusion we respectfully protest the appellation designations in Notice 961 and 960 so long as we own this Mark.

As with other final rules establishing viticultural areas, the information submitted in support of establishing the Red Hills Lake County viticultural area shows that TTB is not creating the viticultural area name but instead is recognizing an existing geographic area. TTB recognizes the interplay between trademarks and geographical designations and in the past has rejected proposed viticultural area names when their use would be misleading to the consumer. At other times TTB or ATF (TTB’s predecessor agency) has required modifiers such as “District,” “Valley,” or “Hills” to further distinguish the viticultural area names. This petition has evolved from the initial request to establish “Red Hills” as a viticultural area to the current and final version of “Red Hills Lake County,” a more narrowly defined name for the new viticultural area.

We believe that the trademark owner’s concern and objection over the use of “Red Hill” and “Red Hills” are addressed by the fact that the new viticultural area name will modify “Red Hills” with “Lake County” thus minimizing the opportunity for consumers to become misled by the use of the new viticultural area name and the trademarked name. The establishment of the Red Hills Lake County viticultural area will not cause the rule’s opponent to “relinquish” using the trademark “Red Hill Vineyard” as a brand name. This is because, contrary to the case of “Napa Valley” and “Napa Ridge” cited by the commenter, we do not believe that any confusion will arise between “Red Hills Lake County” and the commenter’s “Red Hill Vineyard.” We note in this regard that the word “Napa” when used in a viticultural sense is only associated with the Napa Valley in California, with the result that any use of the word “Napa” to designate the origin for a wine not from that geographical area would be inherently misleading and therefore precluded. In the present case, however, the words “Red Hills” taken together or separately do not have

comparable viticultural import, and it is for this reason that we consider only the entire name “Red Hills Lake County” and not merely the “Red Hills” portion of that name to be viticulturally significant.

Although the commenter who objected to the proposed rule will not lose its Red Hills Vineyard brand name as a result of this final rule, ATF, TTB’s predecessor agency, did indicate in the past:

It is not the policy of ATF to become involved in purely private disputes involving proprietary rights, such as trademark infringement suits. However, in the event a direct conflict arises between some or all of the rights granted by a registered trademark under the Lanham Act and the right to use the name of a viticultural area established under the FAA Act, it is the position of ATF that the rights applicable to the viticultural area should control. ATF believes that the evidence submitted by the petitioner establishes that designation of the Wild Horse Valley viticultural area is in conformance with the law and regulations. Accordingly, ATF finds that Federal registration of the term “Wild Horse” does not limit the Bureau’s authority to establish a viticultural area known as “Wild Horse Valley.”

(See the “Wild Horse Valley” viticultural area final rule, T.D. ATF–278, 53 FR 48247, November 30, 1988.)

#### Boundary Evidence and Changes

##### Red Hills—General Background

The Red Hills Lake County viticultural area is located in Lake County, California. The new area is within the existing Clear Lake viticultural area, which surrounds that large body of water, and which is, in turn, within the large, multi-county North Coast viticultural area. Historically, walnuts have been the major agricultural crop of this area, prospering in the red soil and rolling terrain. Around the time of Prohibition, two small vineyards were replaced with walnut orchards, but in more recent years growers have replanted several old orchards to wine grapes. There are now approximately 3,100 acres of vineyards within the Red Hills Lake County viticultural area, and more blocks are planned for future development.

Situated on a tract of rocky, red-colored volcanic soil, the Red Hills Lake County viticultural area is distinct from the surrounding region. Steep ridges, volcanic mountains, and Clear Lake’s southwestern shoreline border the area’s hilly terrain. These geographical elements promote the moderating microclimate and wind patterns that allow for favorable grape-growing conditions without damaging frosts.

### Red Hills Boundary Comments

Two commenters requested expansion of the originally proposed Red Hills Lake County western boundary. In their reply comments, the original petitioners supported the smaller expansion on Benson Ridge, but opposed the other, larger expansion southwest of Kelseyville.

A comment from Barbara Snider supported the viticultural area petition, but requested a western boundary expansion in order to include her company's Fortress Vineyard on Benson Ridge, which is immediately west of the originally petitioned boundary area. The Snider comment included evidence showing the similarity of the soil, elevation, climate, and growing conditions found on the Benson Ridge area to those found in the Red Hills viticultural area. After studying Ms. Snider's comment and evidence, the petitioning group supported the expansion of the Red Hills area to include Ms. Snider's and several other vineyards on Benson Ridge.

Mark Welch of Welch Vineyard Management requested a non-contiguous expansion of the petitioned Red Hills Lake area outside of its proposed western boundary. His proposed 2,180-acre expansion area, southwest of Kelseyville, began about 0.75 miles outside of the petitioned viticultural area's western boundary line and ran south of State Road 29 and 175, ending between Big Valley and the Adobe Reservoir on the Highland Springs United States Geological Service (USGS) map. Mr. Welch contended that this non-contiguous land southwest of Kelseyville is similar to the petitioned Red Hills area and included supporting evidence in his comment.

After considering Mr. Welch's comment and evidence, the Red Hills petition group opposed the further expansion of their proposed viticultural area. The petitioners argued that this second expansion area is more appropriately considered a part of the Big Valley, which lies to the west of Kelseyville and, therefore, outside of the Red Hills.

### TTB Response to Boundary Comments

In response to Ms. Snider's expansion request, we agree with the petitioning group that Benson Ridge should be included in the northwest corner of the Red Hills Lake County viticultural area. The ridge, at the base of Mt. Konocti, and the vineyards on it, including Ms. Snider's Fortress Vineyard, have soils, climate, elevation, and wind patterns similar to those found elsewhere in the viticultural area.

We have also carefully studied Mr. Welch's comment and expansion request. While noting the red and red-yellow soils from varied origins in his proposed expansion area southwest of Kelseyville, Notice No. 961 stated that a major distinguishing characteristic of the Red Hills area is its red, volcanic soil. The Lake County Soil Survey shows the soils in the second proposed expansion area are substantially different in origin and somewhat different in color from those of the Red Hills.

Mr. Welch's comment also provided climatic data showing similar rainfall and heat summation degree-day totals between his proposed expansion area and the petitioned Red Hills area. Mr. Welch's comment letter also indicates similar wind patterns in the proposed western expansion area and those in the Red Hills Lake County viticultural area. As noted in Notice No. 961, another major distinguishing point of the Red Hills area is its unique wind pattern, which helps provide natural frost protection for crops. However, we find that this proposed expansion area has wind patterns that run northward in the morning and southward in the afternoon, while a 1979 Geothermal study provided with the Red Hills petition shows the viticultural area has a generally perpetual west to east wind pattern.

Given the differences in soil and wind patterns, we believe the land in this proposed non-contiguous expansion is, geographically, a part of the Big Valley region of Lake County. Also, Mr. Welch did not provide name evidence for his proposed expansion area, but deferred to the original Red Hills petition. Therefore, we find that the proposed expansion area southwest of Kelseyville does not have the same distinguishing criteria as the Red Hills Lake County viticultural area.

### Area Description and Distinguishing Geographical Features

#### *Physical Features*

Lake County is generally mountainous, with protected, fertile valleys allowing agriculture. Clear Lake, a large lake running northwest to southeast, and Mt. Konocti, a volcanic mountain to the lake's east, are two of the county's dominant geographical points. A field of volcanic hills lies southwest of Clear Lake and south of Mt. Konocti. These red, rolling hills contrast with the wider valleys and higher mountains of the surrounding regions.

The Red Hills Lake County viticultural area lies within this rolling

terrain, which is covered with rocky, red volcanic soils. The viticultural area's boundaries are based on a combination of geography, terrain, soil, and climate factors that contrast with the surrounding area. These geographical elements promote the moderating microclimate and wind patterns that allow for favorable grape-growing conditions without damaging frosts within the area.

Mt. Konocti and the southwestern shore of Clear Lake border the Red Hills Lake County viticultural area on the north. To the south, the Mayacmas Mountains, part of California's Coast Ranges, border the area, while various ridges border the area on the east and west. The northern boundary line excludes Mt. Konocti above its 2,600-foot elevation and Clear Lake at its shoreline.

On its eastern side, the area excludes, at the southeastern end of Clear Lake, all of Anderson Flat with its different soils, the town of Lower Lake, which sits on an alluvial fan, and a steep ridge with older bedrock and different soils.

The Red Hills Lake County viticultural area's southern boundary generally coincides with the Clear Lake viticultural area's boundary line and also excludes the higher Mayacmas Mountains. These peaks share a common volcanic heritage with the rolling hills, but the steep slopes and high elevations are unsuitable for commercial viticulture. The area's southwestern corner skirts Boggs Lake, while the western boundary excludes Camel Back Ridge and some lower elevations south and southeast of Kelseyville.

#### *Soils*

Red, volcanic soils cover over 90% of the Red Hills Lake County viticultural area and are primarily composed of Glenview-Bottlerock-Arrowhead, Konocti-Benridge, and Collayomi-Aiken soil types. These reddish-brown soils are high in gravel content and are a primary factor for the recent growth of viticulture in the Red Hills Lake County area.

While the foothills of Mt. Konocti are within the area's northern boundary line, this volcanic mountain is not considered part of the Red Hills area and serves as a dividing point for several distinct geographical areas. A narrow border of red volcanic soils without significant gravel content helps define the new area's northern boundary along Mt. Konocti's 2,600-foot elevation line. Clear Lake's shoreline and marshy terrain have different soils as well.

The area's eastern boundary follows the edge of its defining volcanic field.

Beyond this field the red soils lack the rock content typical of the Red Hills Lake County viticultural area. Even though the red volcanic soils of the viticultural area extend south of its boundary line, the mountainous terrain to the south precludes commercial viticulture. While Salminas Meadow and Seigler Valley are within the larger Clear Lake viticultural area, they are excluded from the Red Hills area due to their different soils and terrain.

The area's southwestern corner follows the shoreline of Boggs Lake, while the western boundary generally follows Bottle Rock Road along the base of Camel Back Ridge and then runs north and then west to incorporate Benson Ridge at the base of Mt. Konocti. The ridges beyond the southwestern boundary line represent the approximate western extent of the prehistoric volcanic flows that form the area's soils and mark a change to steeper terrain. The land inside the boundary is geologically younger and has more porous volcanic rocks and soils that contrast with the bedrock of Franciscan formation beyond the western boundary area.

#### *Climate*

Rainfall in the Red Hills Lake County viticultural area is influenced by its location between the Mayacmas Mountains and Clear Lake. The mountainous region to the area's south gets about 80 inches of rain a year, while Clear Lake to the north averages 22 inches a year. The Red Hills area lies between these two places and receives from 25 to 40 inches of rain a year.

Fifty miles inland, the Red Hills Lake County viticultural area's relative lack of maritime influence greatly affects the area's microclimate, as does its hilly terrain and location between Clear Lake and the Mayacmas Mountains. The unique wind patterns in the Red Hills area result from the lake-land effect, driven by temperature contrasts between the large lake and the adjacent land, as well as the mountain-valley effect that pushes air either upward or downward in the valleys depending on temperatures.

The combination of the lake-land and the mountain-valley effects creates the area's perpetual motion wind machine, creating the unique wind systems that blow through its open terrain. These constant winds provide natural frost protection for the area's grapevines. Local residents confirm that in the early morning hours of cold spring days, when temperatures dip below the freezing point, the naturally generated winds keep frost from forming on grape shoots, while other Lake County

viticultural areas require frost protection measures.

#### *Boundary Description*

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this notice.

#### *Maps*

The petitioner(s) provided the required maps, and we list them below in the regulatory text.

#### **TTB Finding**

After careful review of the petition and the comments, TTB finds that the evidence submitted supports the establishment of the viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the "Red Hills Lake County" viticultural area in Lake County in northern California, effective 60-days from this document's publication date.

#### **Impact on Current Wine Labels**

Part 4 of the TTB regulations prohibits any label reference on a wine that suggests an origin other than the wine's true place of origin. With certain exceptions, the regulations also prohibit the use of brand names of viticultural significance, such as the name of a State, county, or viticultural area, unless the wine meets the appellation of origin requirements for the named geographic area.

With the establishment of this viticultural area, its name, "Red Hills Lake County," becomes a term of viticultural significance. Wine bottlers using "Red Hills Lake County" in a brand name, including a trademark of the entire name, or in another label reference, must ensure the product is eligible to use the viticultural area's name as an appellation of origin. Because the trademark "Red Hill Vineyard" is different than "Red Hills Lake County," the establishment of this new viticultural area will not result in the Red Hill Vineyard trademark owner becoming ineligible to use the trademark as a brand name. In other words, the trademark does not contain any words that TTB considers viticulturally significant as a result of the establishment of the Red Hills Lake County viticultural area.

For a wine to be eligible to use a viticultural area name listed in part 9 of the TTB regulations as an appellation of origin, at least 85 percent of the grapes used to make the wine must have been grown within that viticultural area. If the wine is not eligible to use the viticultural area name and that name

appears in the wine's brand name or in another label reference, the label is not in compliance and the bottler must change the brand name or other label reference and obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i) for details.

#### **Regulatory Analyses and Notices**

##### *Regulatory Flexibility Act*

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

##### *Executive Order 12866*

This rule is not a significant regulatory action as defined by Executive Order 12866 (58 FR 51735). Therefore, it requires no regulatory assessment.

#### **Drafting Information**

N.A. Sutton of the Regulations and Procedures Division drafted this final rule document.

#### **List of Subjects in 27 CFR Part 9**

Wine.

#### **The Final Rule**

■ For the reasons discussed in the preamble, we amend 27 CFR, chapter 1, part 9 as follows:

#### **PART 9—AMERICAN VITICULTURAL AREAS**

■ 1. The authority citation for part 9 continues to read as follows:

*Authority:* 27 U.S.C. 205.

#### **Subpart C—Approved American Viticultural Areas**

■ 2. Subpart C is amended by adding § 9.169 to read as follows:

##### **§ 9.169 Red Hills Lake County.**

(a) *Name.* The name of the viticultural area described in this section is "Red Hills Lake County".

(b) *Approved Map.* The appropriate maps for determining the boundary of the Red Hills Lake County viticultural area are four 1:24,000 Scale U.S.G.S. topography maps. They are titled:

(1) Clearlake Highlands Quadrangle, CA—Lake Co. 1958, photorevised 1975;

(2) Lower Lake Quadrangle, CA—Lake Co. 1958, photorevised 1975;

(3) Whispering Pines Quadrangle, CA 1958, photoinspected 1975;

(4) Kelseyville Quadrangle, CA—Lake Co. 1959, photorevised 1975.

(c) *Boundary.* The Red Hills Lake County viticultural area is located entirely within the Clear Lake viticultural area of Lake County, California, on the southwestern shore of Clear Lake, between the towns of Lower Lake and Kelseyville, California. The Red Hills Lake County viticultural area boundary is as follows:

(1) Beginning on the Clearlake Highlands map at the intersection of the Clear Lake shoreline, south of Slater Island, with the common boundary line between sections 3 and 4, T12N, R7W, proceed approximately 0.1 miles due south along the common section line to its intersection with the 1,400-foot contour line, section 3, T12N, R7W (Clearlake Highlands Quadrangle); then

(2) Proceed east-southeasterly along the meandering 1,400-foot contour line onto the Lower Lake map south of Anderson Flat, then reverse direction with the contour line and continue westerly, leaving the Lower Lake map, to the 1,400-foot contour line's intersection with Seigler Canyon Creek, section 10, T12N, R7W (Clearlake Highlands Quadrangle); then

(3) Proceed generally west then south along Seigler Canyon Creek to its confluence with Perini Creek, section 9, R7W, T12N, and continue southerly about 1.2 miles along Perini Creek to its intersection with the 1,800-foot contour line, section 16, R7W, T12N (Clearlake Highlands Quadrangle); then

(4) Continue southerly along the 1,800-foot contour line, crossing on to the Whispering Pines map, and, turning westerly, continue along the 1,800-foot contour line to its intersection with Copsy Creek, section 28, T12N, R7W (Whispering Pines Quadrangle); then

(5) Proceed generally west-northwest along Copsy Creek to its headwaters in section 29, then continue straight west-southwesterly to the headwaters of Bad Creek at its intersection with the section 30 eastern boundary line, and, from that point, proceed approximately 0.1 miles due west to Big Canyon Road, section 30, T12N, R7W (Whispering Pines Quadrangle); then

(6) Proceed about 1.1 miles north-northwesterly along Big Canyon Road, leaving the Whispering Pines map, to its intersection with Loch Lomond Road, northeast of Hoberg Airport, section 19, T12N, R7W (Clearlake Highlands Quadrangle); then

(7) Proceed approximately 1.5 miles westerly then southerly along Loch Lomond Road, returning to the Whispering Pines map, passing through Seigler Springs, to the road's first intersection with the 2,640-foot contour line, northwest of Bonanza Springs, section 25, T12N, R8W (Whispering Pines Quadrangle); then

(8) From that point, proceed about 1.9 miles northwesterly in a straight line, passing through the peak of Seigler Mountain, elevation 3,692 feet, and returning to the Clearlake Highlands map, to the line's intersection with Salmina Road, section 23, T12N, R8W (Clearlake Highlands Quadrangle); then

(9) Proceed 1.25 miles northwesterly along Salmina Road to its intersection with State Highway 175, section 15, T12N, R8W (Clearlake Highlands Quadrangle); then

(10) Proceed south 0.6 miles on State Highway 175 to its intersection with the section 15 southern boundary line, T12N, R8W (Clearlake Highlands Quadrangle); then

(11) From that point, proceed about 1 mile in a straight northwesterly line to the peak of Mt. Hannah, elevation 3,978 feet, section 16, T12N, R8W (Clearlake Highlands Quadrangle); then

(12) From the peak of Mt. Hannah, proceed about 0.8 miles in a westerly straight line, crossing on to the Kelseyville map, to the intersection of the 3,000-foot contour line with the section 17 east boundary line, and continue for about 0.45 miles along the same line of direction to the 2,800-foot contour line east of Boggs Lake, section 17, T12N, R8W (Kelseyville Quadrangle); then

(13) Proceed northerly and then westerly along the 2,800-foot contour line around Boggs Lake to the contour line's intersection with Harrington Flat Road, section 18, T12N, R8W (Kelseyville Quadrangle); then

(14) Proceed about 0.4 miles northwesterly along Harrington Flat Road to its intersection with Bottle Rock Road, and continue north-northwesterly along Bottle Rock Road for about 4 miles to its intersection with Cole Creek Road to the west and an unimproved road to the east, section 25, T13N, R9W (Kelseyville Quadrangle); then

(15) Proceed east and then northeasterly on the unimproved road about 0.4 miles to its intersection with the east-west State Highway 29/175 and a northerly unimproved road, section 25, T13N, R9W (Kelseyville Quadrangle); then

(16) From that point, cross State Highway 29/175 and proceed about 1 mile northwesterly along the unnamed, unimproved road to its intersection with

an east-west unimproved road just north of the common boundary line between sections 24 and 25, then go west a short distance on that road to the point where the road turns north along the common boundary between sections 23 and 24; then

(17) Proceed 0.5 miles north along the unimproved road marking the common boundary between sections 23 and 24 to the road's intersection with Wilkinson Road and continue straight north 0.25 miles on Wilkinson Road to its intersection with the 1,600-foot elevation line at the section 24 western boundary line, T13N, R9W (Kelseyville Quadrangle); then

(18) Proceed about 1.35 miles straight easterly to the 2,493 benchmark located along an unnamed light-duty road known locally as Konocti Road, section 19, T13N, R8W (Kelseyville Quadrangle); then

(19) Proceed less than 0.2 miles easterly and then northerly along the unnamed light-duty road to its intersection with the 2,600-foot elevation line, section 19, T13N, R8W (Kelseyville Quadrangle); then

(20) Proceed about 3.0 miles generally east along the 2,600-foot elevation line to its intersection, north of Bell Mine, with an unnamed intermittent stream near the section 20 east boundary line, T13N, R8W (Kelseyville Quadrangle); then

(21) Proceed about 1.2 miles in a straight east-northeasterly line to the intersection of Konocti Bay Road and Soda Bay Road, and continue due east to the shore of Clear Lake, section 22, T13N, R8W (Clearlake Highlands Quadrangle); then

(22) Proceed southeasterly along the shoreline of Clear Lake, returning to the point of beginning at the shoreline's intersection with the common boundary line between sections 3 and 4, T12N, R7W (Clearlake Highlands Quadrangle).

Signed: May 10, 2004.

**Arthur J. Libertucci,**  
Administrator.

Approved: June 25, 2004.

**Timothy E. Skud,**  
Deputy Assistant Secretary (Tax, Trade, and  
Tariff Policy).

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