

The Administrative Procedure Act does not require prior public notice and comment on this amendment because it relates solely to a rule of agency organization, procedure or practice. 5 U.S.C. 553(b)(A). For this reason, the Regulatory Flexibility Act also does not require an initial or final regulatory flexibility analysis. See 5 U.S.C. 603, 604. The revision does not involve the collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

**List of Subjects in 16 CFR Part 4**

Administrative practice and procedure, Freedom of Information Act, Privacy Act, Sunshine Act.

■ For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter 1, Subchapter A, of the Code of Federal Regulations, as follows:

**PART 4—MISCELLANEOUS RULES**

■ 1. The authority citation for Part 4 continues to read as follows:

**Authority:** 15 U.S.C. 46, unless otherwise noted.

■ 2. Revise § 4.14(b) to read as follows:

**§ 4.14. Conduct of business.**

\* \* \* \* \*

(b) A majority of the members of the Commission in office and not recused from participating in a matter (by virtue of 18 U.S.C. 208 or otherwise) constitutes a quorum for the transaction of business in that matter.

\* \* \* \* \*

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 05-17856 Filed 9-7-05; 8:45 am]

**BILLING CODE 6750-01-P**

A quorum \* \* \* shall consist of three members; provided, however, that if the number of Commissioners in office is less than three, a quorum shall consist of the number of members in office; and provided further that on any matter of business as to which the number of members in office, minus the number of members who either have disqualified themselves from consideration of such matter pursuant to § 200.60 or are otherwise disqualified from such consideration, is two, two members shall constitute a quorum for purposes of such matter.

17 CFR 200.41. See also *Falcon Trading Group, supra* (upholding rule, in a matter decided by two Commissioners when the SEC's other three seats were vacant, as an exercise of the SEC's general rulemaking authority). Cf. *SEC v. Feminella*, 947 F. Supp. 722, 725-27 (S.D.N.Y. 1996) (also upholding the rule, but treating it as a delegation).

**DEPARTMENT OF THE TREASURY**

**Alcohol and Tobacco Tax and Trade Bureau**

**27 CFR Part 9**

[T.D. TTB-32; Re: Notice No. 30]

RIN 1513-AA67

**Expansion of the Russian River Valley Viticultural Area (2003R-144T)**

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

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

**SUMMARY:** This Treasury decision expands by 30,200 acres the existing Russian River Valley viticultural area in Sonoma County, California, to a total of 126,600 acres. 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 October 11, 2005.

**FOR FURTHER INFORMATION CONTACT:** Nancy Sutton, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, California 94952; telephone (415) 271-1254.

**SUPPLEMENTARY INFORMATION:**

**Background on Viticultural Areas**

*TTB Authority*

Section 105(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 and/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.

**Russian River Valley Petition and Rulemaking**

*General Background*

TTB received a petition from the Russian River Valley Winegrowers, a wine industry association based in Fulton, California, proposing a 30,200-acre expansion of the established 96,000-acre Russian River Valley viticultural area (27 CFR 9.66). The viticultural area, located in central Sonoma County, California, is about 50 miles north of San Francisco.

Currently, the Russian River Valley viticultural area boundary surrounds areas north and west of Santa Rosa, north of Sebastopol, east of the Bohemian Highway (about 7 miles inland from the Pacific coast), and south of Healdsburg.

This viticultural area also encompasses all of the Chalk Hill

viticultural area (27 CFR 9.52) in its northeastern corner and all but a small portion of the Sonoma County Green Valley viticultural area (27 CFR 9.57) to its southwest.

The Russian River Valley viticultural area is one of several viticultural areas lying entirely within the Northern Sonoma viticultural area (27 CFR 9.70), which lies largely within the Sonoma Coast viticultural area (27 CFR 9.116). Moreover, the Northern Sonoma and Sonoma Coast viticultural areas are both entirely within the vast North Coast viticultural area (27 CFR 9.30).

The 30,200-acre proposed expansion of the Russian River Valley viticultural area would add areas to the east and south of the area's originally established boundary, bringing its total size to about 126,600 acres. The proposed expansion would include areas with a mix of rural, suburban, and urban land uses between Santa Rosa and Mendocino Avenues in Santa Rosa. To the south, the proposed expanded boundary would incorporate the remainder of the Sonoma County Green Valley viticultural area, as well as a large rural region to the west, south, and east of Sebastopol.

Below, we summarize the evidence presented in the petition.

*Name Evidence*

The proposed expansion area to the east and south of the Russian River Valley viticultural area is commonly referred to as the Russian River Valley. A State of California hydrology map shows that the Russian River Valley, including the proposed expansion area, is within the Russian River Valley watershed.

An article from the July 2002 Wine Enthusiast magazine (page 31) described the Russian River Valley as "the box-shaped region that extends from Healdsburg to Santa Rosa in the east, and from Occidental to Guerneville in the west." This description includes the areas to be included in the proposed eastern boundary expansion. The 1996 "Wine Country" guidebook (page 196) provides a "Russian River Region" map that includes the east and south sides of the proposed expanded boundary.

The Homes and Land real estate magazine lists a "Russian River Appellation Vineyard Estate" on pages 32 and 33 of Volume 18, No. 7, published in the summer of 2002. This estate is within the eastern portion of the proposed expansion area.

The Wine News June/July 2002 magazine includes an article titled "Russian River Valley Pinot Noir's Promised Land" that discusses this winegrowing area. On page 60, it notes that the 24-acre Meredith Vineyard is

"located at the southern end of the RRV [Russian River Valley]." This vineyard is in the proposed expansion area as well, as noted on the United States Geological Survey Sebastopol quadrangle map.

*Boundary Evidence*

Historically, agriculture in the proposed expansion area has included apples, prunes, cherries, berries, grapes, and other crops. Local resident Lee Bondi recalls that in the early 1900s his family made wine from Palomino grapes on their ranch in the proposed expansion area. Dena Bondelie, also a resident living in the proposed expansion area, remembers her father talking about the Zinfandel wine made by her grandfather at their Darby Lane property.

Tom Henderson, an area resident, recalls that during World War II his grandparents grew berries, corn, pumpkins, and acorn squash to supplement their apple crop, on their Sander Road property. Merry Edwards, a current resident, states that when she first moved to the area in 1977, it was heavily planted with apples. Today, some of the apple and prune orchards are being replaced with vineyards because of changing agricultural markets.

As of spring 2003, there were approximately 1,070 acres planted to grapes within the proposed expansion area of the Russian River Valley viticultural area, with another 200 acres under development for commercial viticulture purposes.

*Distinguishing Features*

Treasury Decision ATF-159 of October 21, 1983 (48 FR 48813), established the Russian River Valley viticultural area. This Treasury Decision stated:

The Russian River viticultural area includes those areas through which flow the Russian River or some of its tributaries and where there is a significant climate effect from coastal fogs. The specific growing climate is the principal distinctive characteristic of the Russian River Valley viticultural area. The area designated is a cool growing coastal area because of fog intruding up the Russian River and its tributaries during the early morning hours.

*Climate*

Fog is the single most unifying and significant feature of the previously established Russian River Valley viticultural area. The 30,200-acre proposed expansion area also has heavy fog as documented by Robert Sisson, Sonoma County Viticulture Farm Advisor Emeritus, on his 1976 map titled "Lines of Heaviest and Average

Maximum Fog Intrusion for Sonoma County."

The expansion petition and Treasury Decision ATF-159 both refer to the Winkler degree-day system, which classifies grape-growing climatic regions. (The degree-day system is described as the total summation of accumulated heat units (degrees of temperature) that are above 50 degrees F during each day of the typical growing season from April to October. See "General Viticulture," Albert J. Winkler, University of California Press, 1975.) As noted in Treasury Decision ATF-159, "The Russian River Valley viticultural area is termed "coastal cool" with a range of 2,000 to 2,800 accumulated heat units."

The petition provides growing season temperature data from 2001 for four vineyards within the proposed expansion area.

Vineyard	Degree days (accumulated heat units)
Le Carrefour .....	2,636
Osley East .....	2,567
Osley West .....	2,084
Bloomfield .....	2,332

The table above shows that the degree days for all four vineyards fall within the 2,000 to 2,800 accumulated heat units range of Winkler's "coastal cool" climate. The evidence confirms that these vineyards in the proposed expansion area have the same grape-growing climate as found within the originally established Russian River Valley viticultural area.

*Elevation*

The terrain of the proposed expansion area ranges in elevation from about 70 feet east of Sebastopol, to around 800 feet to the west, toward Occidental. These elevations are similar to those found within most of the originally established Russian River Valley viticultural area.

*Soils*

There is a similar range and diversity of soils in the proposed expansion area and in the originally established Russian River Valley viticultural area. Although Treasury Decision ATF-159 does not identify unique soils within the originally established viticultural area, the similarity of soils is documented on the Sonoma County Soil Survey maps (Department of Agriculture, Soil Conservation Service, U.S. Forest Service, and University of California Agricultural Experiment Station, undated) on survey sheets 65, 66, 73, 74, 80, 82, 88, 89, 96, and 97.

The predominant soils within the proposed expansion area include Huichica Loam, Yolo Clay Loam, and Yolo Silt Loam. These soils are depicted on sheet 74 of the Sonoma County Soil Survey. The same soils are also present in the northern region vineyards of the current Russian River Valley viticultural area, as documented on pages 57 and 66 of the soil survey.

#### Watershed

The Russian River watershed, unit #18010110, as depicted on the 1978 State of California Hydrology map, covers the Russian River Valley viticultural area and the proposed expansion area. Specifically, the watershed extends from the southern part of Lake Mendocino to Sonoma Mountain, and from the west side of Mt. St. Helena to Jenner, where the Russian River meets the Pacific Ocean. Treasury Decision, ATF-159 states that the Russian River Valley viticultural area "includes those areas through which flow the Russian River or some of its tributaries."

#### Boundary Description

The proposed expanded boundary deviates from the established boundary at a point east of Highway 101, along Mark West Springs Road. From that point, the expanded boundary line, in a clockwise direction, travels south to Todd Road in Santa Rosa. It then meanders west, with a southward bulge south of Sebastopol that incorporates the crossroads hamlet of Knowles Corners. Passing north of the town of Bloomfield, the proposed expanded boundary continues northwest of Freestone, where it rejoins the originally established boundary.

For a detailed description of the proposed change to the Russian River Valley's boundary, see the changes to the narrative boundary description of the viticultural area in the amended regulatory text published at the end of this notice.

#### Maps

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

#### Notice of Proposed Rulemaking

TTB published a notice of proposed rulemaking regarding the proposed expansion of the Russian River Valley viticultural area in the **Federal Register** as Notice No. 30 on January 31, 2005 (70 FR 4797). In that notice, TTB requested comments by April 1, 2005, from all interested persons.

TTB received three comments in response to Notice No. 30. One

commenter requested an additional 90 days to study the petition but then withdrew the request shortly after submitting it. Two other comments supported the viticultural area expansion. One of the supporting comments indicates that the expansion of the original Russian River Valley viticultural area corrects the "previously illogical boundaries" designated by the 1983 establishment of the Russian River Valley viticultural area. The other supportive comment states that the proposed expansion more accurately takes into account the natural boundaries and the unique climate of the Russian River Valley viticultural area.

#### TTB Finding

After careful review of the petition and the comments received, TTB finds that the evidence submitted supports the proposed expansion of the Russian River Valley viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we expand the boundaries of the "Russian River Valley" viticultural area in Sonoma County, California, as proposed, effective 30 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 indicates or implies an origin other than the wine's true place of origin. The proposed expansion of the Russian River Valley viticultural area will not affect currently approved wine labels. The adoption of this expansion may allow additional vintners to use "Russian River Valley" as an appellation of origin on their wine labels. For a wine to be eligible to use as an appellation of origin the name of a viticultural area specified in part 9 of the TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). 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)(2) for details.

#### 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

Nancy Sutton of the Regulations and Procedures Division drafted this document.

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

Wine.

#### The Regulatory Amendment

■ 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. Amend § 9.66 by revising paragraphs (b) and (c)(8) through (c)(14), redesignating paragraphs (c)(15) through (c)(26) as (c)(23) through (c)(34), and adding new paragraphs (c)(15) through (c)(22) to read as follows:

#### § 9.66 Russian River Valley.

\* \* \* \* \*

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Russian River Valley viticultural area are 11 United States Geological Survey 1:24,000 Scale topographic maps. They are titled:

(1) Healdsburg, California Quadrangle—Sonoma Co., 7.5 Minute Series, edition of 1993;

(2) Guerneville, California Quadrangle—Sonoma Co., 7.5 Minute Series, edition of 1993;

(3) Cazadero, California Quadrangle—Sonoma Co., 7.5 Minute Series, edition of 1978;

(4) Duncans Mills California Quadrangle—Sonoma Co., 7.5 Minute Series, edition of 1979;

(5) Camp Meeker, California Quadrangle—Sonoma Co., 7.5 Minute Series, edition of 1995;

(6) Valley Ford, California Quadrangle, 7.5 Minute Series, edition of 1954; photorevised 1971;

(7) Two Rock, California Quadrangle, 7.5 Minute Series, edition of 1954; photorevised 1971;

(8) Sebastopol, California Quadrangle—Sonoma Co., 7.5 Minute Series, edition of 1954; photorevised 1980;

(9) Santa Rosa, California Quadrangle—Sonoma Co., 7.5 Minute Series, edition of 1954; and

(10) Mark West Springs, California Quadrangle, 7.5 Minute Series, edition of 1998, and

(11) Jintown, California Quadrangle—Sonoma Co., 7.5 Minute Series, edition of 1993.

(c) *Boundaries.* \* \* \*

\* \* \* \* \*

(8) Proceed southeast along the Bohemian Highway, crossing over the Camp Meeker map, to the town of Freestone, where the highway intersects at BM 214 with an unnamed medium-duty road (known locally as Bodega Road, section 12, T6N, R10W, on the Valley Ford map).

(9) Proceed 0.9 mile northeast on Bodega Road to its intersection, at BM 486, with Jonvive Road to the north and an unnamed light duty road to the south, (known locally as Barnett Valley Road, T6N, R9W, on the Camp Meeker map).

(10) Proceed 2.2 miles south, and then east, on Barnett Valley Road, crossing over the Valley Ford map, to its intersection with Burnside Road in section 17, T6N, R9W, on the Two Rock map.

(11) Proceed 3.3 miles southeast on Burnside Road to its intersection with an unnamed medium duty road at BM 375, T6N, R9W, on the Two Rock map.

(12) Proceed 0.6 mile straight southeast to an unnamed 610-foot elevation peak, 1.5 miles southwest of Canfield School, T6N, R9W, on the Two Rock map.

(13) Proceed 0.75 mile straight east-southeast to an unnamed 641-foot elevation peak, 1.4 miles south-southwest of Canfield School, T6N, R9W, on the Two Rock map.

(14) Proceed 0.85 mile straight northeast to the intersection with an unnamed intermittent stream and Canfield Road; continue 0.3 mile straight in the same northeast line of direction to its intersection with the common boundary of Ranges 8 and 9, just west of an unnamed unimproved dirt road, T6N, on the Two Rock map.

(15) Proceed 1.8 miles straight north along the common Range 8 and 9 boundary line to its intersection with Blucher Creek, T6N, on the Two Rock map.

(16) Proceed 1.25 miles generally northeast along Blucher Creek to its

intersection with Highway 116, also known as Gravenstein Highway, in section 18, T6N, R8W, on the Two Rock map.

(17) Proceed 0.2 mile straight southeast along Highway 116 to its intersection with an unnamed light duty road to the north in section 18, T6N, R8W, on the Two Rock map.

(18) Proceed 0.1 mile straight northwest along the unnamed light duty road to its intersection with an unnamed medium-duty road to the east, (known as Todd Road in section 18, T6N, R8W, on the Two Rock map).

(19) Proceed 4.8 miles east, north, and east again along Todd Road, a medium-duty road, crossing over the Sebastopol map and then passing over U.S. Highway 101 and continuing straight east 0.1 mile to Todd Road's intersection with Santa Rosa Avenue, a primary road that is generally parallel to U.S. Highway 101, in section 2, T6N, R8W, on the Santa Rosa map.

(20) Proceed 5.8 miles generally north along Santa Rosa Avenue, which becomes Mendocino Avenue, to its intersection with an unnamed secondary road, known locally as Bicentennial Way, 0.3 mile north-northwest of BM 161 on Mendocino Avenue, section 11, T7N, R8W, on the Santa Rosa map.

(21) Proceed 2.5 miles straight north, crossing over the 906-foot elevation peak in section 35 of the Santa Rosa map, to its intersection with Mark West Springs Road and the meandering 280-foot elevation in section 26, T8N, R8W, of the Mark West Springs map.

(22) Proceed 4.8 miles north-northwest along Mark West Springs Road, which becomes Porter Creek Road, to its intersection with Franz Valley Road, a light-duty road to the north of Porter Creek Road, in section 12, T8N, R8W, on the Mark West Springs map.

\* \* \* \* \*

Signed: July 6, 2005.

**John J. Manfreda,**  
*Administrator.*

Approved: August 12, 2005.

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

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**DEPARTMENT OF THE TREASURY**

**Alcohol and Tobacco Tax and Trade Bureau**

**27 CFR Part 9**

[T.D. TTB-33; Re: Notice No. 33]

RIN 1513-AA97

**Establishment of the Niagara Escarpment Viticultural Area (2004R-589P)**

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

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

**SUMMARY:** This Treasury decision establishes the Niagara Escarpment viticultural area in Niagara County, New York. 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 October 11, 2005.

**FOR FURTHER INFORMATION CONTACT:** Nancy Sutton, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, California 94952; telephone (415) 271-1254.

**SUPPLEMENTARY INFORMATION:**

**Background on Viticultural Areas**

*TTB Authority*

Section 105(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*

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