

List of Subjects in 21 CFR Part 1310

Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

For the reasons set forth above, 21 CFR part 1310 is proposed to be amended as follows:

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES [AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 827(h), 830, 871(b), 890.

2. Section 1310.04 is amended by revising paragraphs (f)(1)(i) table and

(ii), (g)(1)(i) through (vii), and adding paragraphs (g)(1)(viii) and (ix) to read as follows:

§ 1310.04 Maintenance of records.

- * * * * *
- (f) * * *
- (1) * * *
- (i) * * *

| Code | Chemical | Threshold by base weight |
|------|---|---------------------------------------|
| 8522 | N-Acetylanthranilic acid, its esters, and its salts | 40 kilograms. |
| 8530 | Anthranilic acid, its esters, and its salts | 30 kilograms. |
| 8256 | Benzaldehyde | 4 kilograms. |
| 8735 | Benzyl cyanide | 1 kilogram. |
| 8675 | Ergonovine and its salts | 10 grams. |
| 8676 | Ergotamine and its salts | 20 grams. |
| 8678 | Ethylamine and its salts | 1 kilogram. |
| 6695 | Hydriodic acid | 1.7 kilograms (or 1 liter by volume). |
| 8704 | Isosafrole | 4 kilograms. |
| 8520 | Methylamine and its salts | 1 kilogram. |
| 8502 | 3, 4-Methylenedioxyphenyl-2-propanone | 4 kilograms. |
| 8115 | N-Methylephedrine, its salts, optical isomers, and salts of optical isomers | 1 kilogram. |
| 8119 | N-Methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers | 1 kilogram. |
| 6724 | Nitroethane | 2.5 kilograms. |
| 8317 | Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers | 2.5 kilograms. |
| 8791 | Phenylacetic acid, its esters, and its salts | 1 kilogram. |
| 2704 | Piperidine and its salts | 500 grams. |
| 8750 | Piperonal (also called heliotropine) | 4 kilograms. |
| 8328 | Propionic anhydride | 1 gram. |
| 8323 | Safrole | 4 kilograms. |

(ii) For List I chemicals that are contained in scheduled listed chemical products as defined in § 1300.02(b)(34)(i), the thresholds established in paragraph (g) of this section apply only to non-retail distribution, import, and export. Sales of these products at retail are subject to the requirements of Part 1314 of this chapter.

* * * * *

- (g) * * *
- (1) * * *

(i) Ephedrine, its salts, optical isomers, and salts of optical isomers

(ii) Gamma-Butyrolactone (Other names include: GBL; Dihydro-2(3H)-furanone; 1,2-Butanolide; 1,4-Butanolide; 4-Hydroxybutanoic acid lactone; gamma-hydroxybutyric acid lactone)

(iii) Hypophosphorous acid and its salts (including ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite, and sodium hypophosphite)

(iv) Iodine

(v) N-phenethyl-4-piperidone (NPP)

(vi) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers

(vii) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers

(viii) Red phosphorus

(ix) White phosphorus (Other names: Yellow Phosphorus)

* * * * *

3. Section 1310.10 is amended by revising paragraph (a) introductory text to read as follows:

§ 1310.10 Removal of the exemption of drugs distributed under the Food, Drug and Cosmetic Act.

(a) The Administrator may remove from exemption under section 1300.02(b)(28)(i)(D) any drug or group of drugs that the Administrator finds is being diverted to obtain a listed chemical for use in the illicit production of a controlled substance. In removing a drug or group of drugs from the exemption the Administrator shall consider:

* * * * *

4. Section 1310.14 is added to read as follows:

§ 1310.14 Removal of exemption from definition of regulated transaction.

The Administrator finds that the following drugs or groups of drugs are being diverted to obtain a listed chemical for use in the illicit production of a controlled substance and removes the drugs or groups of drugs from

exemption under § 1300.02(b)(28)(i)(D) of this chapter pursuant to the criteria listed in § 1310.10 of this part:

(a) Nonprescription drugs containing ephedrine, its salts, optical isomers, and salts of optical isomers.

(b) Nonprescription drugs containing pseudoephedrine, its salts, optical isomers, and salts of optical isomers.

(c) Nonprescription drugs containing phenylpropanolamine, its salts, optical isomers, and salts of optical isomers.

Dated: November 7, 2007.

Michele M. Leonhart,
Deputy Administrator.

[FR Doc. E7-22560 Filed 11-19-07; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4 and 9

[Notice No. 77; Re: Notice No. 36]

RIN: 1513-AA92

Proposed Establishment of the Calistoga Viticultural Area (2003R-496P)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: On March 31, 2005, the Alcohol and Tobacco Tax and Trade Bureau published a notice of proposed rulemaking to establish the Calistoga viticultural area in Napa County, California. In light of comments regarding the potential adverse impact on established brand names that we received in response to that prior notice, we issue this new notice of proposed rulemaking to seek comments on our proposal to provide “grandfather” protection for certain brand names used on existing certificates of label approval, provided those labels also carry information that would dispel an impression that the wine meets the requirements for using the viticultural area name. 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: We must receive written comments regarding this notice on or before December 20, 2007.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- <http://www.regulations.gov> (Federal e-rulemaking portal; follow the instructions for submitting comments); or

- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice and any comments we receive about this proposal at <http://www.regulations.gov> under Docket No. 2007-0067. You also may view copies of the previous notice regarding this subject and the comments received in response to it under the same docket number. In addition, you may view this notice, the previous notice, all comments received in response to the two notices, as well as all related petitions, maps, and supporting materials, by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202-927-2400.

FOR FURTHER INFORMATION CONTACT: Amy R. Greenberg, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200E, Washington, DC 20220; telephone 202-927-8210; or e-mail Amy.Greenberg@ttb.gov.

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 consumers with adequate information regarding product identity and prohibits the use of misleading information on those 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 (AVA) 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 specifies the requirements for an AVA petition. The petition to establish Calistoga as an AVA was filed in accordance with these procedures and requirements.

Prior Notice of Proposed Rulemaking

On March 31, 2005, TTB published in the **Federal Register** (70 FR 16451) as Notice No. 36 a notice of proposed rulemaking regarding the establishment of the Calistoga viticultural area. In that

notice, we requested comments from all interested persons by May 31, 2005. TTB received two comments regarding Notice No. 36 before the close of the comment period. Both comments fully support the establishment of the Calistoga viticultural area.

Subsequent Comments Received

After the close of the public comment period, we received representations on behalf of two entities opposing the establishment of the Calistoga viticultural area as proposed. These entities are Calistoga Partners, L.P., d.b.a. Calistoga Cellars, and Chateau Calistoga LLC, which uses “Calistoga Estate” as its trade name.

In a written submission to TTB, representatives of Calistoga Partners, L.P., expressed opposition to the establishment of the Calistoga viticultural area due to the impact the establishment of an area named “Calistoga” would have on the winery and its existing wine labels. In particular, Calistoga Partners noted that it has been using the “Calistoga Cellars” name on wine labels since 1998. TTB notes that under 27 CFR 4.25(e), a wine may be labeled with a viticultural area appellation if, among other things, at least 85 percent of the wine is derived from grapes grown within the viticultural area named. Calistoga Partners indicated that its wines would not meet the 85 percent requirement for its existing labels if the proposed viticultural area were established. Because the winery has been using the “Calistoga Cellars” brand name on its labels since 1998, it may not rely upon the “grandfather” provision in 27 CFR 4.39(i)(2), which applies only to brand names used on certificates of label approval issued prior to July 7, 1986.

The letter also stated that the partnership has collectively invested millions of dollars and years of effort to build the trade name, trademark, and brand name “Calistoga Cellars.” Its representatives claim that to lose the use of the name or to be restricted in its use would materially impact the winery. As to the merits of a “Calistoga” viticultural area, Calistoga Partners argues that the term “Calistoga” is most often associated with the town of Calistoga, which is known as a tourist destination rather than a specific viticultural area.

For these reasons, Calistoga Partners requested that TTB: (1) Reopen the public comment period to allow it and others to provide additional comment on alternative solutions that would protect Calistoga brand names; (2) exempt Calistoga Partners from any restrictive consequences resulting from

the establishment of the Calistoga viticultural area through a “grandfathering” approach; (3) delay approval of the AVA until an industry-wide solution is implemented to protect Calistoga Partners; or (4) allow Calistoga Partners to continue to use its existing labels with a TTB-approved notice on the back label.

As previously noted, TTB also received comments opposing the establishment of the “Calistoga” viticultural area on behalf of Chateau Calistoga LLC, citing the impact that establishment of the AVA would have on existing labels bearing the “Calistoga Estate” trade name. This entity stated that it has spent considerable money and time building the “Calistoga Estate” name. According to that entity, its wines are made under contract with a winery in Santa Rosa, California, and are produced with grapes from the Napa region, but not necessarily from the Calistoga region. This commenter also supported use of a “grandfathering” approach.

Revised Regulatory Text Proposed

After careful consideration of the evidence submitted in support of the petition and the comments received, TTB believes that there is a substantial basis for the establishment of the viticultural area. The petitioners submitted sufficient evidence of the viticultural distinctiveness of the Calistoga area, and no evidence was provided to contradict the petitioners’ evidence. TTB also believes that “Calistoga” is the most appropriate name for the area. There is ample evidence clearly showing that “Calistoga” is the name by which the area is locally and regionally known and that the term “Calistoga” by itself has been associated historically with viticulture, specifically Napa Valley viticulture.

Consistent with previous practice, we considered alternative names as a means to resolve conflicts between existing labels and the establishment of a “Calistoga” proposed viticultural area. Previously, for example, the “Oak Knoll District of Napa Valley” viticultural area (T.D. TTB–9, 69 FR 8562) and the “Diamond Mountain District” viticultural area (T.D. ATF–456, 66 FR 29698) were established after resolving such conflicts, resulting in AVA names that were modifications of those originally proposed by the petitioners. The petition to establish the “Oak Knoll District of Napa Valley” viticultural area originally proposed the name “Oak Knoll District”. The petition to establish the “Diamond Mountain District” viticultural area originally proposed the

name “Diamond Mountain” for the viticultural area. In these and similar cases, TTB found that name evidence supported the use of the modified names, that the modified names were associated with the proposed viticultural area boundaries, and that their use reduced potential consumer confusion with long-standing existing labels. In the two cases cited here, Oak Knoll District of Napa Valley and Diamond Mountain District, the petitioners also agreed to the modifications of the viticultural area names.

In the case at hand, the petitioners and commenters have not suggested any modification to the proposed name that would resolve conflicts between existing brand names and the establishment of a “Calistoga” viticultural area. Moreover, TTB did not find any potential name modifications to be acceptable substitutes for the proposed “Calistoga” viticultural area name. Because the term “Calistoga” alone is a specific, not generic, descriptive name that is clearly associated with Napa Valley viticulture, regardless of whether there may be adequate evidence to support a name modification such as “Calistoga District”, the term “Calistoga” alone has viticultural significance, and therefore any viticultural area name including the term “Calistoga” would be as problematic as the proposed name.

TTB believes that the evidence submitted by the petitioners indicates that designation of the Calistoga viticultural area would be in conformity with applicable law and regulations. We do not find the request by Calistoga Partners that TTB delay the approval of the “Calistoga” viticultural area “until an industry-wide solution is implemented to protect Calistoga Cellars” to be an appropriate or responsive resolution. The Calistoga case and cases with similar factual bases involve a fundamental conflict between two otherwise valid and appropriate TTB administrative actions, the approval of labels by TTB through issuance of COLAs and the subsequent approval of a petitioned-for AVA.

However, TTB also believes that Calistoga Partners has demonstrated a legitimate interest in not losing the ability to continue to use its long-held Calistoga Cellars brand name on its wines in the same way it has been using this name. We believe it is desirable to find a solution that will address the legitimate interests of both the Calistoga petitioners, who have an interest in gaining formal recognition of a viticulturally significant area and name, and vintners who have an interest in

retaining the use of long-held brand names. We also believe, as a fundamental tenet of administrative practice, that it is preferable to avoid, whenever possible, a situation in which one otherwise proper administrative action (issuance of a certificate of label approval in this case) is restricted by a subsequent, valid administrative action (establishment of a viticultural area). And perhaps most importantly, where a conflict arises between a proposed AVA name and an established brand name, we do not believe that, in the context of the labeling provisions of the FAA Act, it is an appropriate government role to make choices between competing commercial interests, if such choices can be avoided.

Accordingly, for the reasons stated above, we are proposing to add in part 9 a new section covering the Calistoga viticultural area. The new part 9 section text would differ from the section text proposed in Notice No. 36 by the addition of a paragraph (d) to set forth a “grandfather” provision that allows continued use of brand names that contain the term “Calistoga” even though the wine may not meet the appellation of origin requirements of part 4 for the use of the “Calistoga” appellation of origin. Under this “grandfather” provision, a brand name containing the word “Calistoga” may only appear on wine that does not meet the appellation of origin requirements if: (1) The appropriate TTB officer finds that the brand name has been in actual commercial use for a significant period of time under one or more existing certificates of label approval that were issued under part 4 of this chapter before March 31, 2005; and (2) the wine is labeled with information that the appropriate TTB officer finds to be sufficient to dispel the impression that the use of “Calistoga” in the brand name conforms to the appellation of origin requirements of § 4.25. In no case would the grandfather provision apply to a label approved on or after March 31, 2005, the date that Notice No. 36 was published in the **Federal Register** originally proposing the establishment of the Calistoga viticultural area. The proposed rule is intended to limit the adverse effect on established brands, and at the same time dispel any misleading impression that might exist as to the origin of the grapes used in those wines.

We note that this proposed paragraph (d) text would not extend to the use of the name “Calistoga Estate” because that name was submitted to TTB for label approval after the notice of proposed rulemaking was made public

through publication in the **Federal Register**.

This proposal would not affect the application of the current “grandfather” provision in 27 CFR 4.39(i)(2) to any Calistoga brand name used in an existing certificate of label approval issued prior to July 7, 1986.

In this document we have also included a proposed amendment to 27 CFR 4.39(i)(1) to conform that text to the paragraph (d) “grandfather” provision in the proposed “Calistoga” AVA text in part 9.

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. If we establish this proposed viticultural area, its name, “Calistoga,” will be recognized under 27 CFR 4.39(i)(3) as a name of viticultural significance. The text of the proposed regulation clarifies this point. Consequently, wine bottlers using “Calistoga” in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product either is eligible to use the viticultural area’s name as an appellation of origin or meets the requirements for application of the existing “grandfather” provision or the “grandfather” provision proposed for the Calistoga AVA.

For a wine to be eligible to use as an appellation of origin a viticultural area name or other term specified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name or other term as an appellation of origin and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term appears in another reference on the label in a misleading manner, the bottler would have to 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. In addition to the amendment of § 4.39(i)(1) contained in this document, see 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

We specifically invite comments from interested members of the public on the proposed “grandfather” provision protecting certain brand names used on existing certificates of label approval that contain the proposed “Calistoga” viticultural area name, provided those labels also carry information that would dispel an impression that the wine meets the requirements for using the viticultural area name. In addition, we invite comment on the period of time of actual commercial use that would be deemed “significant” under the rule, and on alternatives to the proposed regulatory text.

We also solicit comments on what type of dispelling information is sufficient to prevent consumers from being misled as to the origin of the grapes used to produce such wines and comments on the appropriate type size and location on the label for such information. Any other comments related to the approaches in this proposed rule are invited.

Comments that provide the factual basis supporting the views or suggestions presented will be particularly helpful in developing a reasoned regulatory decision of this matter. However, comments consisting of mere allegations or opinions are counterproductive to the rulemaking process that is designed to build a factual evidentiary record for the final rule.

Submitting Comments

You may submit comments on this notice by one of the following two methods:

- **Federal e-Rulemaking Portal:** To submit a comment on this notice using the online Federal e-rulemaking portal, visit <http://www.regulations.gov> and select “Alcohol and Tobacco Tax and Trade Bureau” from the agency drop-down menu and click “Submit.” In the resulting docket list, click the “Add Comments” icon for Docket No. 2007–0067 and complete the resulting comment form. You may attach supplemental files to your comment. More complete information on using [Regulations.gov](http://www.regulations.gov), including instructions for accessing open and closed dockets and for submitting comments, is available through the site’s “User Tips” link.

- **Mail:** You may send written comments to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number and your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity’s name as well as your name and position title. If you comment via <http://www.regulations.gov>, please enter the entity’s name in the “Organization” blank of the comment form. If you comment via mail, please submit your entity’s comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

You may view copies of this notice and any electronic or mailed comments we receive about this proposal on the Federal e-rulemaking portal at <http://www.regulations.gov> under Docket No. 2007–0067. You also may view copies of the previous notice regarding this subject and the comments received in response to it under the same docket number. To view a posted document or comment, go to <http://www.regulations.gov> and select “Alcohol and Tobacco Tax and Trade Bureau” from the agency drop-down menu and click “Submit.” In the resulting docket list, click the appropriate docket number, then click the “View” icon for any document or comment posted under that docket number.

All submitted and posted comments will display the commenter’s name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You may also view copies of this notice, the previous notice, and all electronic and mailed comments received in response to the two notices, as well as all related petitions, maps,

and supporting materials, by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5 x 11-inch page. Contact our information specialist at the above address or by telephone at 202-927-2400 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule imposes no new reporting or recordkeeping 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 proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Amy R. Greenberg and Michael D. Hoover of the Regulations and Rulings Division drafted this document.

List of Subjects

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend 27 CFR, chapter I, parts 4 and 9, as follows:

PART 4—LABELING AND ADVERTISING OF WINE

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

Authority: 27 U.S.C. 205, unless otherwise noted.

2. In § 4.39, paragraph (i)(1) is amended by adding the words “or in § 9.209(d) of this chapter” after “subparagraph (2)”.

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

4. Subpart C is amended by adding § 9.209 to read as follows:

§ 9.209 Calistoga.

(a) *Name.* The name of the viticultural area described in this section is “Calistoga”. For purposes of part 4 of this chapter, “Calistoga” is a term of viticultural significance, but its use in a brand name is also subject to paragraph (d) of this section.

(b) *Approved maps.* The appropriate maps used to determine the boundary of the Calistoga viticultural area are four United States Geological Survey 1:24,000 scale topographic quadrangle maps. They are titled:

- (1) Mark West Springs, Calif. (1993);
- (2) Calistoga, CA (1997);
- (3) St. Helena, Calif. (1960, revised 1993); and
- (4) Detert Reservoir, CA (1997).

(c) *Boundary.* The Calistoga viticultural area is located in northwestern Napa County, California. The boundary beginning point is on the Mark West Springs map at the point where the Napa-Sonoma county line intersects Petrified Forest Road in section 3, T8N/R7W. From this point, the boundary:

(1) Continues northeasterly along Petrified Forest Road approximately 1.9 miles to the road's intersection with the 400-foot contour line near the north bank of Cyrus Creek approximately 1,000 feet southwest of the intersection of Petrified Forest Road and State Route 128 on the Calistoga map;

(2) Proceeds generally east-southeast (after crossing Cyrus Creek) along the 400-foot contour line to its intersection with Ritchey Creek in section 16, T8N/R6W;

(3) Follows Ritchey Creek northeast approximately 0.3 miles to its intersection with State Route 29 at the 347-foot benchmark;

(4) Proceeds east-southeast along State Route 29 approximately 0.3 miles to its intersection with a light-duty road labeled Bale Lane;

(5) Follows Bale Lane northeast approximately 0.7 miles to its intersection with the Silverado Trail;

(6) Proceeds northwest along the Silverado Trail approximately 1,500 feet to its intersection with an unmarked driveway on the north side of the Silverado Trail near the 275-foot benchmark;

(7) Continues northeasterly along the driveway for 300 feet to its intersection with another driveway, and then continues north-northeast in a straight line to the 400-foot contour line;

(8) Follows the 400-foot contour line easterly approximately 0.7 miles to its intersection with an unimproved dirt road (an extension of a road known locally as the North Fork of Crystal Springs Road), which lies in the Carne Humana Land Grant approximately 1,400 feet southwest of the northwest corner of section 11, T8N/R6W on the St. Helena map;

(9) Continues northerly along the unimproved dirt road approximately 2,700 feet to its intersection with the 880-foot contour line in section 2, T8N/R6W;

(10) Follows the meandering 880-foot contour line northwesterly, crossing onto the Calistoga map in section 2, T8N/R6W, and continues along the 880-foot contour line through section 3, T8N/R6W, sections 34 and 35, T9N/R6W, (with a brief return to the St. Helena map in section 35), to the 880-foot contour line's intersection with Biter Creek in the northeast quadrant of section 34, T9N/R6W;

(11) Continues westerly along the meandering 880-foot contour line around Dutch Henry Canyon in section 28, T9N/R6W, and Simmons Canyon in section 29, T9N/R6W, to the contour line's first intersection with the R7W/R6W range line in section 30, T9N/R6W;

(12) Continues northerly along the meandering 880-foot contour line across the two forks of Horns Creek and through Hoisting Works Canyon in section 19, T9N/R6W, crossing between the Calistoga and Detert Reservoir maps, to the contour line's intersection with Garnett Creek in section 13, T9N/R7W, on the Detert Reservoir map;

(13) Continues westerly along the meandering 880-foot contour line, crossing between the Calistoga and Detert Reservoir maps in sections 13 and 14, T9N/R7W, and in the region labeled “Mallacomes or Moristul y Plan de Agua Caliente,” to the contour line's intersection with the Napa-Sonoma county line approximately 1.1 miles northeast of State Route 128 in the “Mallacomes or Moristul y Plan de Agua Caliente” region, T9N/R7W, of the Mark Springs West map; and

(14) Proceeds southerly along the Napa-Sonoma county line to the beginning point.

(d) *Brand names.* A brand name containing the word “Calistoga” may be used on a label only if:

(1) The wine meets the appellation of origin requirements of § 4.25 of this chapter for the viticultural area established by this section;

(2) The appropriate TTB officer finds that the brand name has been in actual commercial use for a significant period of time under one or more existing

certificates of label approval that were issued under part 4 of this chapter before March 31, 2005, and the wine is labeled with information that the appropriate TTB officer finds to be sufficient to dispel the impression that the use of "Calistoga" in the brand name conforms to the appellation of origin requirements of § 4.25 of this chapter; or

(3) The use of the brand name complies with § 4.39(i)(2) of this chapter.

Signed: November 7, 2007.

John J. Manfreda,
Administrator.

Approved: November 7, 2007.

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 Parts 4, 9, and 70

[Notice No. 78]

RIN 1513-AB39

Proposed Revision of American Viticultural Area Regulations (2006R-325P)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to amend its regulations concerning the establishment of American viticultural areas (AVAs). The proposed changes address the effect that the approval of an AVA may have on established brand names. In addition, the proposed changes provide clearer regulatory standards for the establishment of AVAs within AVAs. The proposed amendments also clarify the rules for preparing, submitting, and processing viticultural area petitions. Finally, we propose to add to the regulations statements regarding the viticultural significance of established viticultural area names, or key portions of those names, for wine labeling purposes.

DATES: We must receive written comments on or before January 22, 2008.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- *E-mail:* <http://www.regulations.gov> (Federal e-rulemaking portal; follow the instructions for submitting comments);

- *U.S. mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412; or

- *Hand Delivery/Courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice and any comments we receive about this proposal at <http://www.regulations.gov> under Docket No. 2007-0068. You also may view copies of this notice and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202-927-2400.

FOR FURTHER INFORMATION CONTACT: Rita D. Butler, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20220; telephone: 202-927-1608, fax: 202-927-8525.

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) provides for the establishment of definitive viticultural areas and for 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) prescribes the standards for submitting a petition to establish a new American viticultural area (AVA) and contains a list with descriptions of all approved AVAs. Part 70 of the TTB regulations (27 CFR part 70) includes provisions regarding rulemaking petition procedures.

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 geographic features, the boundaries of which have been recognized and defined in part 9 of the TTB regulations. These AVA 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.

Current AVA Petition Process

Section 9.3 of the TTB regulations (27 CFR 9.3) sets forth the procedure and standards for the establishment of AVAs. Paragraph (a) of that section states that TTB will use the rulemaking process based on petitions received in accordance with §§ 4.25(e)(2) and 70.701(c) to establish AVAs. Paragraph (b) of § 9.3 states that a petition for the establishment of an AVA must contain the following:

- Evidence that the name of the viticultural area is locally and/or nationally known as referring to the area specified in the application;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the application;
- Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) that distinguish the viticultural features of the proposed area from surrounding areas;
- The specific boundaries of the viticultural area, based on features that can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and
- A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

The Need for Regulatory Changes

For a number of reasons, TTB and Treasury believe that a comprehensive review of the AVA program is warranted in order to maintain the integrity of the program. First, we are concerned that because the establishment of an AVA can limit the use of existing brand names, approval of an AVA can have a deleterious effect on established