

Dated: March 13, 1984.

William F. Randolph,
Acting Associate Commissioner for
Regulatory Affairs.

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-168; Reference Notice No. 398]

Central Delaware Valley Viticultural Area; Establishment

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

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule establishes a viticultural area along the Delaware River, in Pennsylvania and New Jersey, to be known as "Central Delaware Valley." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes that the establishment of the Central Delaware Valley viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries in the area to better designate where their wines come from and will enable consumers to better identify the wines from this area.

EFFECTIVE DATE: April 18, 1984.

FOR FURTHER INFORMATION CONTACT: Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the use of an approved viticultural area name as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas. An American viticultural area is defined in 27 CFR 4.25a(e)(1) as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Notice of Proposed Rulemaking

A petition was submitted by Mr. James R. Williams, a grape grower in Frenchtown, New Jersey, for the establishment of a viticultural area in Pennsylvania and New Jersey, along a portion of the Delaware River roughly between Trenton, New Jersey, and Easton, Pennsylvania. In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 398, in the Federal Register on Friday, December 4, 1981 (46 FR 59276).

Comments

The notice of proposed rulemaking solicited public comments with respect to the proposed viticultural area. Comments have been received from 15 individuals. Six of these expressed unqualified support for the proposed area, while five expressed firm opposition. One additional commenter supported the petition but advocated expansion of the proposed boundaries so as to include his vineyard. Another commenter stated that he supported the petition but also declared that, in his opinion, the proposed area is "not a grape growing area" and that ATF was "not going to get" climatic evidence to distinguish the proposed area from surrounding areas. One commenter had no strong feelings about the viticultural area, but expressed the opinion that, contrary to assertions in the petition, the Delaware River does not exert a very great climatic influence. Finally, a U.S. Congressman expressed concern about ATF's proposal, based on opposition from two of his constituents. (Those constituents also communicated their opposition to ATF, and are included among those mentioned above as having expressed firm opposition.)

The comments that were opposed to the viticultural area generally related to three separate objections. These are: (1) The viticultural development of the area, (2) the name of the area, (3) the climate of the area as compared with the surrounding areas. These objections will be discussed separately below.

Viticultural Development of the Area

The objection was made that there was insufficient viticultural development to warrant establishment of a viticultural area. However, ATF regulations do not specify the minimum level of grape-growing that must be proven before an area can be established as a viticultural area. The regulations only require that the area be a "grape-growing area." Certainly, a minimum level of grape-growing must exist. However, in the Central Delaware Valley, there are seven individuals with

commercial vineyards totaling 55 acres, and there are three wineries. More wineries and additional vineyard acreage are expected in the future. These vineyards and wineries are dispersed evenly throughout the viticultural area. One of the vineyards has been in commercial production for over 17 years. ATF believes that with respect to this viticultural area of limited size (about 150 square miles), this evidence of viticultural development is sufficient to indicate that the area is a "grape-growing area."

Name of the Area

Objection was also made that the name of the area, "Central Delaware Valley," would be misleading in that the term "Delaware Valley" is widely used to designate the entire watershed of the Delaware River, which is much more extensive than this viticultural area. ATF has given these comments careful consideration. ATF has also given consideration to the question of whether the name "Central Delaware Valley" (as opposed to "Delaware Valley") is "known"—either locally or nationally—as referring to the area described in the petition. (See 27 CFR 4.25a(e)(2)(i).)

The petitioner was requested to submit more extensive evidence relating to this issue. In response, the petitioner submitted the results of a public opinion survey conducted by him. This survey was administered to 53 people. Thirty-three of them were randomly picked from employees at a company in Piscataway, New Jersey; ten were randomly picked residents of Hunterdon County, New Jersey; and ten were Pennsylvania residents (mostly from Bucks County). These people were asked which of four alternatives would most closely correspond in their minds to the term "Central Delaware Valley." Fifty-nine percent indicated "The portion of the Delaware River Valley between Trenton and the Easton/Phillipsburg vicinity." This description corresponds generally to the southern and northern boundaries proposed in the petition.

In addition, the petitioner submitted examples of labels currently being used by him on wine for sale in New Jersey only. (Intra-state sales of wine are not subject to ATF viticultural area regulations.) These wine labels use the term "Central Delaware Valley." Furthermore, an organization of grape-growers within the viticultural area has taken the name, "Central Delaware Valley Viticultural Council."

Therefore, ATF has concluded that there is evidence that the name, "Central Delaware Valley," is

"locally * * * known as referring to the area specified in the application," as required by 27 CFR 4.25a(e)(2)(i).

Climate of the Viticultural Area

Objection was also made to the contention, set forth in the notice of proposed rulemaking, that the climate in this viticultural area is different from the surrounding areas. Those making this objection argued that the climate near the Delaware River is not sufficiently different from the climate some distance away from the river. It was contended that the Delaware River does not exert any significant modifying influence on the climate of the area immediately adjacent to that river, as had been asserted in the petition and in the notice of proposed rulemaking.

Because of these comments, the petitioner was asked to submit better data relating to his contention that the river exerts a modifying climatic influence. The petitioner did so. ATF has studied the data that the petitioner submitted, as well as other data sources such as the book, "Climatic Atlas of the United States," prepared by the U.S. Department of Commerce. Data presented in this reference book, concerning maximum, minimum, and average temperatures; number of days above 90° and below 32°; last date of freezing weather in spring and first date of freezing weather in autumn; and mean length of frost-free period, indicate that the climate in the vicinity of the Central Delaware Valley viticultural area is warmer than in surrounding areas. Data compiled by the petitioner showed yearly and monthly maximum and minimum temperatures, and length of growing season, at sites both within and without the viticultural area. These data showed evidence that temperatures are higher and growing seasons longer within the viticultural area than in nearby areas at corresponding latitudes without the area.

In consideration of these data, ATF has concluded that there is evidence to show that the Delaware River does exert some modifying influence on the climate of the land within approximately 3 miles of it. ATF believes that the regulatory requirement of 27 CFR 4.25a(e)(2)(iii) has been met, and that the Central Delaware Valley viticultural area has been shown to be distinguishable on the basis of climate from the surrounding areas.

Boundaries

The boundaries proposed by the petitioner were intended to have included the Bucks Country Winery, since that winery is within the area of climatic influence of the Delaware River,

However, the road that was chosen as the boundary passes just on the northeast side of the winery, and thus the winery was inadvertently placed outside of the area by the originally proposed boundaries. Consequently, the boundaries have been slightly expanded in a southwestward direction at that point so as to include the property owned by the Bucks Country Winery.

In another part of the viticultural area, the boundaries have been expanded northeastward so as to include an area near Little York, New Jersey, that contains the vineyard of Mr. Klaus Schreiber. Although it extends as far as 5 miles from the Delaware River, Mr. Schreiber was able to compile evidence showing that the area around his property is moderated by the river's climatic influence. Mr. Schreiber explained that his area is an exception to the general rule (that the river's moderating influence extends for only about 3 miles) because of the hills to his east, which trap the moderate climate that is blown there from the Delaware River by the prevailing westerly winds. Consequently, ATF believes that this area properly belongs within the Central Delaware Valley viticultural area. Accordingly, the boundaries have been expanded so as to include this area.

Miscellaneous

ATF does not wish to give the impression by approving the Central Delaware Valley viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and in advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of the Central Delaware Valley wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule, because it will not have a significant economic impact on a substantial number of small entities. This final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities; or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the

Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices have participated in the preparation of this document, both in matters of substance and style.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Accordingly, under the authority contained in Section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph A. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.49 to read as follows:

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| * * * |
| Subpart C—Approved American Viticultural Areas |
| Sec. |
| * * * * * |
| 9.49 Central Delaware Valley. |
| * * * * * |

Par. B. Subpart C is amended by adding, in numerical sequence, § 9.49, which reads as follows:

§ 9.49 Central Delaware Valley.

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

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Central Delaware Valley viticultural area are nine U.S.G.S. maps in the 7.5 minute series (topographic). They are titled:

(1) Bloomsbury Quadrangle, New Jersey, 1955 (photorevised 1970).

(2) Riegelsville Quadrangle, Pennsylvania-New Jersey, 1956 (photorevised 1968 and 1973).

(3) Frenchtown Quadrangle, Pennsylvania-New Jersey, 1955 (photorevised 1970).

(4) Lumberville Quadrangle, Pennsylvania-New Jersey, 1955 (photorevised 1968 and 1973).

(5) Stockton Quadrangle, New Jersey-Pennsylvania, 1954 (photorevised 1970).

(6) Hopewell Quadrangle, New Jersey, 1954 (photorevised 1970).

(7) Buckingham Quadrangle, Pennsylvania—Bucks Co., 1953 (photorevised 1968 and 1973).

(8) Lambertville Quadrangle, Pennsylvania-New Jersey, 1953 (photorevised 1968 and 1973).

(9) Pennington Quadrangle, New Jersey-Pennsylvania 1954 (photorevised 1970).

(c) *Boundary*—(1) *General.* The Central Delaware Valley viticultural area is located in Pennsylvania and New Jersey. The starting point of the following boundary description is the summit of Strawberry Hill, which is located in New Jersey near the Delaware River about one mile northwest of Titusville, at the southern end of the Central Delaware Valley viticultural area. The starting point is found on the Lambertville Quadrangle map.

(2) *Boundary Description:* (i) From the summit of Strawberry Hill (475 feet) in a straight line to the summit of Mt. Canoe (428 feet—on the Pennington Quadrangle map).

(ii) From there due east to Mercer County Route 579 (Bear Tavern Road) about .2 mile south of Ackors Corner.

(iii) Then northward along Mercer 579 to Harbourton.

(iv) From there northwestward along Route 3 (Mount Airy-Harbourton Road) to the 2nd English Presbyterian Church in Mount Airy (on the Stockton Quadrangle map).

(v) From there along Old York Road northward to Benchmark 157 on U.S. Route 202.

(vi) From there westward along Queen Road and northwestward along Mount Airy Road to Dilts Corner.

(vii) From there northwestward along Dilts Corner Road to Sandy Ridge Church.

(viii) From there northwestward via Cemetary Road to Benchmark 305.

(ix) From there northward along Covered Bridge Road to Green Sergeant Covered Bridge.

(x) From there generally westward along Sanford Road to its intersection with Route 519 about one mile north of Rosemont.

(xi) From there northward along Route 519 (via Kingwood, Barbortown and Baptistown) to Palmyra (on the Frenchtown Quadrangle map).

(xii) From the intersection in Palmyra, in a straight line northward to the 487 ft. elevation point near Nishisakawick Creek.

(xiii) From there in a straight line northwestward to Benchmark 787 on Rt. 579 (a secondary hard surface highway, unnamed on the map).

(xiv) From there northward along Route 579 to Benchmark 905 (on the Bloomsbury Quadrangle map).

(xv) From there in a straight line westward to the 952 ft. summit of Musconetcong Mountain.

(xvi) From there in a straight line southwestward to the 836 ft. summit of Musconetcong Mountain (on the Riegelsville Quadrangle map).

(xvii) From there in straight lines connecting the 838 ft., 839 ft., 707 ft., and 386 ft. summits of Musconetcong Mountain.

(xviii) From the 386 ft. summit of Musconetcong Mountain in a straight line across the Delaware River to the intersection of Routes 611 and 212.

(xix) From there along Route 212 to the intersection with the lane going up Mine Hill.

(xx) From there in a straight line to the summit of Mine Hill (488 feet).

(xxi) From there in a straight line southwestward to the 522 ft. summit elevation point.

(xxii) From there southeastward to the summit of Chestnut Hill (743 feet).

(xxiii) From there in a straight line southeastward to the 347 ft. summit elevation point (located south of Kintnersville near Benchmark 173, about .1 mile west of Route 611).

(xxiv) From there in a straight line eastward to the summit of Coffman Hill (826 feet).

(xxv) From there in a straight line southeastward to the 628 ft. summit elevation point (about .3 mile north of Camp Davis).

(xxvi) From there in a straight line southeastward to the point where

Bridgeton, Nockamixon, and Tinicum Townships meet (on the Frenchtown Quadrangle map).

(xxvii) From there in a straight line southward to the intersection of Slant Hill Road (Covered Bridge Road) and Stump Road in Smiths Corner (on the Lumberville Quadrangle map).

(xxviii) From there in a straight line southeastward to the 472 ft. elevation point near Rocky Ridge School.

(xxix) From there southeastward in a straight line to the 522 ft. elevation point on Plumstead Hill.

(xxx) From there in a straight line to the 482 ft. elevation point about .7 mile northwest of Lahaska.

(xxxi) From there in a straight line southeastward to the 352 ft. elevation point approximately .6 mile northeast of Lahaska.

(xxxii) From there in a straight line to the point where a power transmission line crosses the 400 ft. contour line on the south side of Solebury Mountain (on the Lambertville Quadrangle map).

(xxxiii) From there in a straight line to the tower on Bowman Hill in Washington Crossing State Park.

(xxxiv) From there in a straight line across the Delaware River to the starting point, the summit of Strawberry Hill (475 feet).

Signed: February 16, 1984.

Stephen E. Higgins,
Director.

Approved: March 8, 1984.

E. T. Stevenson,

Deputy Assistant Secretary (Operations).

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DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1054-84]

Intergovernmental Affairs; Editorial Amendments

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: In an effort to manage more effectively the ever-increasing role of the Department with respect to intergovernmental affairs, the Attorney General has charged the Department's Office of Legislative Affairs with the direct responsibility of coordinating the Department's intergovernmental affairs responsibilities and has renamed that office the Office of Legislative and Intergovernmental Affairs.