

(xiii) Receive copies of all evidence submitted after the hearing and comment on it;

(xiv) Proposed findings of fact and conclusions of law;

(xv) When appropriate, recommend to the administrative law judge that the claim be allowed without conducting a hearing; and

(xvi) When appropriate, recommend to the administrative law judge that the request for hearing be dismissed as provided under this Subpart. Reasons for dismissal include the following:

(A) Res judicata applies

(§ 416.1457(c)(1));

(B) The request for hearing was not timely filed, with no good cause

(§ 416.1457(c)(3));

(C) The party who filed the request to a hearing died (§ 416.1457(c)(4));

(D) The individual is not a proper party (§ 416.1432);

(E) There has not been a reconsidered determination (§ 416.1430(a)(1)), or an initial or revised initial determination that blindness or disability has ceased for medical reasons (§ 416.1430(a)(2)), or a reconsideration of a revised determination of an initial or reconsidered determination that involves a suspension, reduction or termination of benefits (§ 416.1430(a)(3)), or a revised initial determination or revised reconsidered determination that does not involve a suspension, reduction or termination of benefits

(§ 416.1430(a)(4)), or a revised decision based on evidence not included in the record on which the prior decision was based (§ 416.1430(a)(5));

(F) The individual has not filed a written request for hearing (§ 416.1433(a)); or

(G) The party who filed the request for hearing did not appear (§ 416.1457(b)).

(e) *Responsibility of administrative law judge.* The administrative law judge will continue to exercise the various responsibilities as set out in §§ 416.1429-416.1461.

(f) *Right to request Appeals Council review.* The SAA representative will not have the right of a party to request Appeals Council review of an administrative law judge's decision or dismissal under § 416.1467. The SSA representative will not participate in any proceedings before the Appeals Council. However, the SSA representative may refer cases to the Appeals Council for possible review on its own motion under § 416.1469. When the Appeals Council remands a case to the administrative law judge for further proceedings, and an SSA representative participated in the proceedings which were the basis for the Appeals Council's remand order, the SSA representative

may participate in any further proceedings before the administrative law judge.

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-109; Ref: Notice No. 376]

Cienega Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in San Benito County, California, to be known as "Cienega Valley." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Cienega Valley as a 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: September 20, 1982.

FOR FURTHER INFORMATION CONTACT: Robert L. White, Research and Regulations 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 name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

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

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. 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.

Almaden Vineyards petitioned ATF to establish a viticultural area in San Benito County, California, to be named "Cienega Valley."

In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 376, in the Federal Register on July 28, 1981 (46 FR 38536), proposing the establishment of the Cienega Valley viticultural area.

Historical and Current Evidence of the Name

The name of the area, Cienega Valley, was well documented by the petitioner. After evaluating the petition, ATF believes that the Cienega Valley viticultural area has a unique historical identity and that the name "Cienega Valley" is the most appropriate name for the area.

Geographical Evidence

In accordance with 27 CFR 4.25a(e)(2), a viticultural area should possess geographical features which distinguish the viticultural features of the area from surrounding areas.

Cienega Valley is located at the base of the Gabilan Mountain Range which rises to 3,274 feet and forms a boundary line between San Benito and Monterey Counties. The Pescadero Creek runs through the vineyards and the San Andreas earthquake fault line borders the northeast edge. Cienega Valley lies approximately 5 miles south, overland, from the town of Hollister. On the east is the Paicines Vineyards. The Cienega Valley area is planted with hundreds of acres of vineyards consisting of numerous varieties of grapes.

Cienega Valley lies northeast of the Salinas Valley which is known as a cooler area and is often blanketed with fog. Salinas Valley strongly influences the micro-climate of the Cienega Valley by sending cooler air and fog into the Cienega grape-growing region. The terrain is extremely hilly to mountainous and the elevation ranges from approximately 930 feet to well over 1,500 feet. The average elevation in the Cienega Valley area is higher than much of the surrounding area including Paicines.

Due to the closeness of the Cienega Valley area to the Gabilan Mountain Range, Cienega Valley often has more rain than the surrounding area, thus creating different micro-climatic conditions. Rainfall averages 15.29 inches per year based on 53 years of records. There is some dry farming around the winery. However, water coming down out of the Gabilan Mountains into the Pescadero Creek is

used for irrigation of a portion of the vineyards.

The Cienega Valley area is in a wind tunnel of cool ocean air flowing to the San Joaquin Valley. Trees growing adjacent to the vineyard area help protect the area from the wind. Also, Cienega Valley is protected from the wind due to the location of its eastwest canyons. Cienega Valley gets more evening fog than much of the surrounding area because of its location at the foot of the Gabilan Mountains. This fog usually burns off by early morning. Over the last four years, the temperature in Cienega Valley has averaged 2,881 degree-days as classified by the University of California at Davis system of heat summation by degree-days.

The soil in Cienega Valley is loamy, generally well drained, and often underlain by weathered granite. The main soil associations of the flood plains and alluvial fans are Sorrento-Yolo-Mocho and Clear Lake-Pacheco-Williams. The soil associations on the uplands are the San Benito-Gazos-Linne association and the Sheridan-Cineba-Auberry association. In general there is good water holding capacity and the root depth ranges from medium to quite deep.

Boundaries

The boundaries proposed by the petitioner would partially overlap with a smaller viticultural area named Lime Kiln Valley. After careful evaluation of both the Cienega Valley and Lime Kiln Valley petitions, ATF believes that both viticultural areas have enough similar characteristics to justify expanding the boundaries of Cienega Valley to include all of Lime Kiln Valley. However, due to slight differences in rainfall and temperature, ATF believes that Lime Kiln Valley exhibits distinct micro-climatic characteristics which make it distinguishable as a separate valley from the larger, more generally defined, Cienega Valley. Therefore, ATF has decided to recognize Cienega Valley as a distinct viticultural area which has the smaller Lime Kiln Valley viticultural area located totally within its boundaries. Accordingly, the boundaries of the Cienega Valley viticultural area have been expanded in the southeastern portion of the area to include all of Lime Kiln Valley.

Comments

No comments were received during the comment period. ATF has received no information from any source indicating opposition to the petition.

Miscellaneous

ATF does not wish to give the impression by approving the Cienega Valley viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being viticulturally distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Cienega 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 this final rule 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, 48 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 geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Disclosure

A copy of the petition and appropriate maps with boundaries marked are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4405, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue, NW., Washington, D.C.

Drafting Information

The principal author of this document is Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices of the Bureau 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

1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.38. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

*	*	*	*	*
§ 9.38	Cienega Valley.			
*	*	*	*	*

2. Subpart C is amended by adding § 9.38. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

*	*	*	*	*
§ 9.38	Cienega Valley.			

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

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Cienega Valley viticultural area are four U.S.G.S. maps. They are titled:

(1) "Hollister Quadrangle, California," 7.5 minute series (1971);

(2) "Tres Pinos Quadrangle, California," 7.5 minute series (1971);

(3) "Mt. Harlan Quadrangle, California," 7.5 minute series (1968); and

(4) "Paicines Quadrangle, California," 7.5 minute series (1968).

(c) *Boundaries.* The Cienega Valley viticultural area is located in San Benito County, California. The beginning point is the Gaging Station, located on U.S.G.S. map "Paicines Quadrangle" in the southeast portion of Section 21, Township 14 South, Range 6 East.

(1) From the beginning point, the boundary follows the Pescadero Creek Bed in a southeasterly direction about 100 feet to the unimproved road and continues southwesterly on the unimproved road .5 mile to where it intersects with the south border of Township 14 South, Range 6 East, Section 21;

(2) Thence in a straight line to the southwest portion of Section 28, Township 14 South, Range 6 East, where the 1400-foot contour line intersects the south border of Section 28;

(3) Thence following the 1400-foot contour line through the following sections; Sections 28, 29, and 30, Township 14 South, Range 6 East; Section 25, Township 14 South, Range 5 East; Sections 30, 19, 20, and returning to 19, Township 14 South, Range 6 East, to a point where the 1400-foot contour line intersects with the section line between Sections 19 and 18, Township 14 South, Range 6 East;

(4) Thence in a straight line due north to the intersection with the 1200-foot contour line in Section 18, Township 14 South, Range 6 East;

(5) Thence following the 1200-foot contour line in a generally northwesterly direction to where it intersects with the north boundary of Township 14 South, Range 5 East, Section 10; then following this boundary line in a northwesterly direction to where this boundary intersects with the 1600-foot contour line; thence following the 1600-foot contour line in a generally northerly direction to where it intersects with the unimproved road;

(6) Thence looping southward along the unimproved road and continuing on in an easterly direction past the designated "Spring" and then in a northeasterly direction parallel with the Gulch to the Vineyard School on Cienega Road; thence in a southeasterly direction on Cienega Road .4 mile to where the unimproved road intersects; thence traveling north and following the unimproved road in a northwesterly direction about 5. mile; then looping in an easterly direction .75 mile to the intersection of the unimproved road and branching in a southeasterly direction;

(7) Thence crossing Township 13 South to Township 14 South and following the unimproved road to the intersection of the western border of Township 14 South, Range 6 East, Section 6; thence south to the northwest corner of Section 7;

(8) Thence continuing in a straight diagonal line to the southeast corner of Township 14 South, Range 6 East, Section 7; thence from the southeast corner of Section 7 .25 mile west to

where it intersects with an unimproved road;

(9) Thence following this unimproved road in a southeasterly direction to the Gaging Station, the point of beginning.

Signed: July 2, 1982.

W. T. Drake,
Acting Director.

Approved: July 30, 1982.

J. M. Walker, Jr.,
Assistant Secretary, Enforcement and Operations.

[FR Doc. 82-22756 Filed 8-18-82; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Approval of Permanent Program Amendment From the Commonwealth of Virginia Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 946 by adding the permanent program amendments submitted by Virginia under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director, OSM, has determined that the modifications of the Virginia program meet the requirements of SMCRA. Accordingly, the Director has approved the Virginia program amendments.

Part 946 of 30 CFR Chapter VII is being amended to implement this decision.

EFFECTIVE DATE: August 19, 1982.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone (202) 343-5351.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1980, the Secretary of the Interior received a proposed regulatory program from the Commonwealth of Virginia. On October 22, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the

Secretary approved in part and disapproved in part the proposed program (45 FR 69977-70000). Virginia resubmitted its proposed regulatory program on August 13, 1981, and after a subsequent review, the Secretary approved the program subject to the correction of nineteen minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the December 15, 1981 *Federal Register* (46 FR 61088-61115).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Virginia program can be found in the December 15, 1981 *Federal Register* (46 FR 61088-61115).

One of the minor conditions of approval imposed by the Secretary was condition "r" which required Virginia to submit a revised policy statement or otherwise amend its program to make its coal haul roads policy consistent with the Federal requirements.

On March 31, 1982, Virginia submitted material to satisfy condition "r" (Administrative Record No. VA 383). OSM published a notice in the *Federal Register* on April 26, 1982, announcing receipt of the modifications and inviting public comment on whether the proposed program amendment corrected the deficiency (47 FR 17827-17829). The public comment period ended May 26, 1982. A public hearing scheduled for May 12, 1982, was not held because no one expressed a desire to present testimony. On May 11, 1982, OSM published a notice in the *Federal Register* to cancel the public hearing (47 FR 20152-20153).

On July 9, 1982, Virginia submitted the following: (1) Enacted regulations relating to performance standards for coal haul roads; (2) enacted legislation which repeals § 33.1-246.1 of the Virginia Code allowing deeding of haul roads to counties once the Secretary of the Interior has approved the Commonwealth's regulations to establish performance standards for haul roads; and (3) enacted legislation (Chapter 23, Title 45.1) restoring reclamation requirements for operations of two acres or less (Administrative Record No. VA 400). Also in the July 9, 1982 submission, Virginia included proposed regulations to implement Chapter 23, Title 45.1, which would control surface coal mining operations disturbing two acres or less. A *Federal Register* notice published July 23, 1982 (47 FR 31897-31898) reopening the public