

(7) Then westerly along Millbrook Road to the point of intersection with Mount Briar Road;

(8) Then northerly along Mount Briar Road to the point of intersection with a 500-foot contour line;

(9) Then northerly along the 500-foot contour line to the point of intersection with Red Hill Road;

(10) Then southerly along the 500-foot contour line to the point of intersection with Porterstown Road;

(11) Then south-southwesterly 29,000 feet in a straight line to the most eastern point on the boundary line of the Chesapeake and Ohio Canal National Historical Park lying north of the town of Dargan;

(12) Then southwesterly 7,500 feet in a straight line to the point of the "Harpers Ferry Quadrangle" map lying approximately 600 feet northwest of Manidokan Camp at the confluence of an unnamed stream and the Potomac River; and

(13) Then easterly along the meanders of the Potomac River on the "Harpers Ferry Quadrangle," "Charles Town Quadrangle," and "Point of Rocks Quadrangle" maps to the point of beginning.

Signed: September 9, 1983.

Stephen E. Higgins,

Director.

Approved: October 4, 1983.

David Q. Bates,

Deputy Assistant Secretary (Operations).

[FR Doc. 83-27888 Filed 10-12-83; 8:45 am]

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## 27 CFR Part 9

[T.D. ATF-153; Ref: Notice No. 441]

### The Lake Michigan Shore Viticultural Area

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

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

**SUMMARY:** This final rule establishes a viticultural area in the southwestern corner of the State of Michigan to be known as "Lake Michigan Shore." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Lake Michigan Shore as a viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries to better designate where their wines come from and will enable consumers to better identify the wines from this area.

**EFFECTIVE DATE:** November 14, 1983.

#### FOR FURTHER INFORMATION CONTACT:

Robert L. White, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7531).

#### 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, for the listing of approved American viticultural areas.

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 procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Mr. Charles W. Catherman, Jr., of St. Julian Wine Company, Inc., and Mr. Michael E. Byrne, of Warner Vineyards, Inc., petitioned ATF to establish a viticultural area in the southwestern corner of the State of Michigan to be known as "Lake Michigan Shore." The area consists of about 1,280,000 acres and totally encompasses the Counties of Berrien and Van Buren in addition to portions of Allegan, Kalamazoo and Cass Counties. In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 441, in the *Federal Register* on December 14, 1982 (47 FR 55959), proposing the establishment of the Lake Michigan Shore viticultural area.

##### Comments

Five comments were received during the comment period. Four were from wineries located within the proposed viticultural area and one was from the Van Buren County Extension Office, Cooperative Extension Service, Michigan State University and the U.S. Department of Agriculture. Three of the four wineries fully support the proposed Lake Michigan Shore viticultural area. In addition, the Cooperative Extension Service (Van Buren County Extension Office) also fully supports the proposal.

One of the wineries located within the proposed area stated in their comment that they oppose the establishment of the Lake Michigan Shore viticultural area for the following reasons:

1. The name gives the consumer the impression that the land in question is near the shore or close to Lake Michigan when in fact some of the area is located 30 to 60 miles away from the actual shoreline.

2. The statement in Notice No. 441 that the entire area receives the tempering "lake effect" of Lake Michigan is of doubtful validity in that certain vinifera species cannot be successfully or commercially grown in this region.

3. The argument for this proposed viticultural area is predicated on grape quantities grown rather than varieties. This commenter states that he feels the use of appellations was to help consumers compare fine wines from different regions. He feels that the use of the Concord variety as a basis for a regional designation would only serve to confuse consumers when they compare wines of the Napa Valley to those of Lake Michigan Shore.

4. Geographically, this area should probably use the Valporaiso Moraine as a potential boundary due to its close lakeshore proximity. Also, parts of northern Indiana should be included in the area.

ATF does not agree with the four reasons given by this commenter for not establishing a Lake Michigan Shore viticultural area. In the first place, we do not feel that the name "Lake Michigan Shore" is misleading. The western boundary of this area is the shoreline of Lake Michigan. The "lake effect" is felt a good distance inland from the shoreline which is why grapes can be grown throughout the Lake Michigan Shore area. This proximity to Lake Michigan and the influence that Lake Michigan exerts on the local climate is the fundamental factor that permits commercially successful viticulture in this area. Consequently, even though the eastern boundary of this area extends in some places up to approximately 45 miles away from the Lake Michigan shoreline, we do not feel that naming this entire area "Lake Michigan Shore" would be misleading to the consumer.

Secondly, the fact that certain vinifera species cannot be successfully or commercially grown in the "Lake Michigan Shore" viticultural area does not mean that the area does not receive the tempering "lake effect" of Lake Michigan. Viticultural areas are not based only on vinifera grapes but on all grape species capable of producing wine. Currently, the "lake effect" helps make it possible to grow about 17 varieties of American, French hybrid, and vinifera grapes in the "Lake Michigan Shore" area.

Thirdly, ATF took both the grape quantities grown and the grape varieties grown into consideration before proposing the "Lake Michigan Shore" viticultural area. Furthermore, the purpose of appellations is not necessarily to help consumers compare fine wines from different regions but rather to inform consumers as to where the grapes used in any particular bottle of wine were grown. Consequently, the use of the Concord variety (or any other grape variety) with a Lake Michigan Shore appellation would not confuse consumers when they compare wines of other viticultural areas to those of Lake Michigan Shore.

And finally, the Valporaiso Moraine was not used as a boundary because it does not extend far enough away from the shoreline to include all the area which is influenced by the "lake effect". In addition, northern Indiana was not included in the "Lake Michigan Shore" viticultural area because Mr. T. Michael Thomas and Mr. A. Robert Earl of the Van Buren County Extension Office, Cooperative Extension Service, Michigan State University and the U.S. Department of Agriculture, stated that the area in northern Indiana that receives "lake effect" climate modification is and will continue to be rather ill-defined. The lake effect is conditioned by the direction from which the mass of a front or weather system is coming from. The lake effect is greatest when fronts are from the west to northwest when the whole expanse of the lake has a chance to moderate the weather system. When from any other compass direction, including southwest, the fronts do not get modified and act the same as they would in Wisconsin or Illinois. Southwest to northeast wind flows are common in spring and fall and have always made fruit production outside of the proposed area somewhat risky. Because of the lack of predictability of the lake effect and the economics of wine grape production, it is unlikely that any substantial acreage will be established in the areas adjacent to the Lake Michigan Shore viticultural area as delineated in this final rule.

#### General Information

The petition and attached documents show that Lake Michigan Shore is located in the southwestern corner of the State of Michigan. The area totally encompasses the counties of Berrien and Van Buren in addition to portions of Allegan, Kalamazoo and Cass Counties. The western boundary of the area is the eastern shore of Lake Michigan. Lake Michigan is the feature which is the basis for the distinct climate and the name "Lake Michigan Shore." This area

includes nine commercial wineries, approximately 930 grape growers, and 14,472 acres of grapes.

Commercial grape growing within the State of Michigan first began in 1867 in Van Buren County. The majority of grapes grown in Michigan are Concord grapes which are used in the production of grape juice and jelly. Approximately 20 percent of the State's grapes are used in wine and account for 3,330 tons of grapes. The wine grapes grown in the "Lake Michigan Shore" viticultural area comprise 17 varieties of American, French hybrid, and vinifera grapes. The counties of Berrien and Van Buren account for 83 percent of the State's grape production, with the three remaining counties in the area comprising an additional 14 percent. The remaining three percent of the State's grape production primarily comes from the previously approved Leelanau Peninsula viticultural area (47 FR 13328, T. D. ATF-99), 200 miles north along the Lake Michigan shore. The previously approved Fennville viticultural area (46 FR 46318, T. D. ATF-91) is within the northwest corner of the Lake Michigan Shore viticultural area.

#### Evidence Relating to the Name

The proposed viticultural area has specifically been known by two names, "Fruit Belt" and "Lake Michigan Shore," while also being generally referred to as "Southwestern Michigan" or "Western Counties." Several State and national books on wine and grapes refer to this area generally as the area behind the sand dunes on the Lake Michigan shore. After carefully evaluating the petition for this viticultural area, ATF believes that "Lake Michigan Shore" is the most appropriate name for this area.

#### Geographical Evidence

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

The petition and attached documents contained substantial geographic and climatic information which show that:

(a) The entire "Lake Michigan Shore" viticultural area receives the tempering "lake effect" of Lake Michigan. This lake effect moderates the winter and summer temperature extremes, and delays budding of the vines beyond the late spring frosts. The lake effect also causes generally uniform climatic conditions, since large bodies of water retain heat and cold and react closer to temperature fluctuations. The number of frost-free growing days in this area ranges from 155 to 175 days, normally during the period of May 10 through

October 13. Immediately to the north and east (the cities of Holland and Jackson, respectively) the dates for last spring and first fall frosts (frost-free growing season) are May 25 through September 24. To the immediate south (South Bend, Indiana) the frost-free growing season is May 30 through September 30. Further, the South Bend area has consistent January mean minimum temperatures of 2 to 4 degrees Fahrenheit lower than the "Lake Michigan Shore" area. The significance of the lake effect is shown by the 116 year history of grape growing in the area and the fact that 97 percent of the State's grapes are grown in the area.

(b) The composition of the soils within the area are not a definitive distinguishing factor. However, the topography of the area does distinguish the area because it is of "glacial moraine" construction as opposed to "till plain" construction for the surrounding areas. Glacial moraines are more conducive to grape growing because of the creation of needed air drainage, whereas till plains flatten out and are unsuitable for grape growing.

(c) The western boundary, the eastern shore of Lake Michigan, is a natural boundary from which the area draws its name and receives the necessary lake effect which moderates the climate. The northern, eastern, and southern boundaries generally identify the extent to which the glacial moraine soil construction changes to till plain.

This viticultural area encompasses a large area with generally uniform geographic and climatic features, as opposed to small microviticultural areas which exhibit very definitive geographic and climatic features such as the "Fennville" viticultural area which is located within this area in the northwest corner.

After evaluating the petition for the Lake Michigan Shore viticultural area, ATF has determined that due to the geographical and climatic features of the Lake Michigan Shore area, it is distinguishable from the surrounding areas.

#### Boundaries

The boundaries proposed by the petitioner are adopted. An exact description of these boundaries is discussed in the regulations portion of this document. ATF believes that these boundaries delineate an area with distinguishable geographic and climatic features.

#### Miscellaneous

ATF does not wish to give the impression by approving the Lake

Michigan Shore 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 advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Lake Michigan Shore wines.

#### 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 (February 17, 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.

#### 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 the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

#### 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.

#### Disclosure

A copy of the petition and comments, along with the appropriate maps with boundaries marked, are available for inspection during normal business hours at the following location: ATF Reading Room; Room 4407, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue, NW, Washington, DC.

#### Drafting Information

The principal author of this document is Robert L. White, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms.

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

Administrative practice and procedure, Consumer protection, Viticultural areas, 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 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.79. As amended, the table of sections reads as follows:

#### Subpart C—Approved American Viticultural Areas

Sec.  
\* \* \* \* \*

9.79 Lake Michigan Shore.

Par. 2. Subpart C is amended by adding § 9.79 to read as follows:

#### Subpart C—Approved American Viticultural Areas

\* \* \* \* \*

#### § 9.79 Lake Michigan Shore.

(a) *Name.* The name of the viticultural area described in this section is "Lake Michigan Shore."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Lake Michigan Shore viticultural area are four U.S.G.S. maps, 1:250,000 series. They are entitled: (1) Chicago (1953, revised 1970); (2) Fort Wayne (1953, revised 1969); (3) Racine (1958, revised 1969); and (4) Grand Rapids (1958, revised 1980).

(c) *Boundaries.* The Lake Michigan Shore viticultural area is located in the southwestern corner of the State of Michigan. The boundaries of the Lake Michigan Shore viticultural area, using landmarks and points of reference found on the appropriate U.S.G.S. maps, are as follows: Starting at the most northern point, the intersection of the Kalamazoo River with Lake Michigan, southeast along the winding course of the Kalamazoo River for approximately 35 miles until it intersects the Penn Central railroad line just south of the City of Otsego; south along the Penn Central railroad line, through the City of Kalamazoo, approximately 25 miles until

it intersects the Grand Trunk Western railroad line at the community of Schoolcraft; southwest along the Grand Trunk Western railroad line approximately 35 miles to the Michigan/Indiana State line; west along the Michigan/Indiana State line approximately 38 miles until it meets Lake Michigan; then north along the eastern shore of Lake Michigan approximately 72 miles to the beginning point.

Signed: September 13, 1983.

W. T. Drake,  
Acting Director.

Approved: October 4, 1983.

David Q. Bates,  
Deputy Assistant Secretary (Operations).

[FR Doc. 83-27887 Filed 10-12-83; 8:45 am]

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#### 27 CFR Parts 170 and 240

[T.D. ATF-149; Re: Notice Nos. 458 and 320]

#### Elimination of Subpart XX and Revision of Sample Requirements for Formula Wines

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

**ACTION:** Treasury decision.

**SUMMARY:** This Treasury decision eliminates 27 CFR Part 240, Subpart XX, Calculations for Wine Production, and requirements for samples of salted wine and special natural wine submitted with applications for formula approval in 27 CFR Parts 170 and 240 respectively. The elimination of Subpart XX and the sample requirements of 27 CFR 170.686 and 240.441 reduces a regulatory burden on affected industries.

**EFFECTIVE DATE:** November 14, 1983.

**FOR FURTHER INFORMATION CONTACT:** James A. Hunt, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226 (202-566-7626).

**SUPPLEMENTARY INFORMATION:** On May 22, 1979, ATF published Notice No. 320 (44 FR 29691), proposing recodification and revision of wine regulations involving 27 CFR Parts 170, 231 and 240, and requested comment from interested parties. The comment period on this advance notice of proposed rulemaking was extended twice, allowing a total time of 15 months for comments. The Bureau received comments covering a wide range of problems concerning wine regulations.

A few comments received suggested that the regulation sections in Part 240, Subpart XX, could be eliminated since these sections primarily contain tables,