

Congressional Record 5842 on the effect of this "hammer" provision).

In the *Federal Register* of December 6, 1993 (58 FR 64123), FDA published a final rule on the circumstances in which containers are misleading and thus would misbrand the food under section 403(d) of the act. This final rule concluded the proceeding that the agency instituted with the misleading container proposal. In the May 12, 1993, document, FDA stated that when it issued such a final rule, it would act to supersede the regulation that had become final by operation of law. Thus, the agency proposed to withdraw the May 10, 1993, regulation in the *Federal Register* of December 6, 1993 (58 FR 64208).

FDA explained that it was proposing to do so for two reasons. First, the May 10, 1993, regulation did not have the benefit of public comment. Thus, the regulation included in the December 6, 1993, final rule (the December 6, 1993 regulation), which was the product of notice and comment rulemaking, is better able than the May 10, 1993, regulation to ensure adequate implementation of section 403(d) of the act and to facilitate compliance. Second, FDA tentatively found that because of the minor differences between the May 10, 1993, regulation and the December 6, 1993, regulation, replacing the former with the latter will not result in any hardship to manufacturers who have relied on the May 10, 1993, regulation.

FDA gave interested persons 10 days to comment on its proposal to withdraw the May 10, 1993, regulation. It also proposed to make any final rule that issues in this proceeding effective on the date of its publication in order to ensure that the supersession of the May 10, 1993, regulation proceeded as expeditiously as possible and with a minimum of confusion or ambiguity.

The comment period on the proposal to withdraw the May 10, 1993, regulation closed on December 17, 1993. FDA received no comments on this proposed action. Therefore, FDA advises that the May 10, 1993, regulation, which became final by operation of law, is withdrawn. FDA advises that it is replacing that regulation with the December 6, 1993, regulation.

Environmental Impact

In the December 6, 1993, proposal (58 FR 64208 at 64209), FDA stated that it had determined under 21 CFR 25.24(a)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment, and that as a result, neither an environmental

assessment nor an environmental impact statement is required. FDA received no comments on the conclusion; therefore FDA restates it here.

Economic Impact

In the December 6, 1993, proposal (58 FR 64208 at 64209), FDA incorporated the conclusion from the December 6, 1993, final rule on slack-fill that the agency's action in replacing the May 10, 1993, regulation would not have any significant economic effects. The agency received no comments on this conclusion and consequently is restating it here.

List of Subject in 21 CFR Part 100

Administrative practice and procedure, Food labeling, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 100 is amended as follows:

PART 100—GENERAL

1. The authority citation for 21 CFR part 100 continues to read as follows:

Authority: Secs. 201, 301, 307, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 337, 342, 343, 348, 371).

§ 100.100 [Removed]

2. Subpart F consisting of § 100.100 *Misleading containers* (as published in the *Federal Register* of May 12, 1993 (58 FR 27932), is removed.

3. For the convenience of the reader, FDA is republishing without change new subpart F, consisting of § 100.100 (as published in the *Federal Register* of December 6, 1993 (58 FR 64136)) to read as follows:

Subpart F—Misbranding for Reasons Other Than Labeling

§ 100.100 Misleading containers.

In accordance with section 403(d) of the act, a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading.

(a) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:

(1) Protection of the contents of the package;

(2) The requirements of the machines used for enclosing the contents in such package;

(3) Unavoidable product settling during shipping and handling;

(4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;

(5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value which is both significant in proportion to the value of the product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or durable commemorative or promotional packages; or

(6) Inability to increase level of fill or to further reduce the size of the package (e.g., where some minimum package size is necessary to accommodate required food labeling (excluding any vignettes or other nonmandatory designs or label information), discourage pilfering, facilitate handling, or accommodate tamper-resistant devices).

(b) [Reserved]

Dated: December 30, 1993.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-352; RE: Notice No. 781]

RIN 1512-AA07

Lake Wisconsin Viticultural Area (92F-017P)

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

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Columbia and Dane Counties, Wisconsin, to be known as Lake Wisconsin. The petition was submitted by Mr. Charles W. Dean, Viticultural Area Consultant, on behalf of Wollersheim Winery located near Prairie-du-Sac, Wisconsin. The establishment of viticultural areas and

the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify the wines they may purchase, and will help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: February 4, 1994.

FOR FURTHER INFORMATION CONTACT: Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202-927-8230).

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 American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

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 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, the boundaries of which have been delineated in subpart C of part 9. 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. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF received a petition from Mr. Charles W. Dean, Viticultural Area Consultant, on behalf of Robert P. Wollersheim and JoAnn I. Wollersheim, proprietors and landowners of Wollersheim Winery near Prairie-du-Sac, Wisconsin, to establish a viticultural area in south-central Wisconsin to be known as "Lake Wisconsin." The viticultural area is bounded by the shoreline of Lake Wisconsin and the Wisconsin River on the north and west. Wollersheim Winery is the sole winery located in the 28,000 acre viticultural area and there are currently twenty-three acres planted to wine grapes.

Notice of Proposed Rulemaking

In response to Mr. Wollersheim's petition, ATF published a notice of proposed rulemaking, Notice No. 781, in the *Federal Register* on September 24, 1993 (58 FR 49949), proposing the establishment of the Lake Wisconsin viticultural area. The notice requested comments from all interested persons by October 25, 1993.

Comments to Notice of Proposed Rulemaking

Seven comments were received concerning the proposal to establish the Lake Wisconsin viticultural area. All seven commenters stated that they fully support the proposed area as delineated in Notice No. 781. One of the commenters was under the mistaken impression that this area had been proposed to be called the Roxbury Viticultural District. However, despite the misunderstanding about the name, this commenter stated in his letter that he heartily supports the establishment of a new viticultural area in this part of Wisconsin which includes the Wollersheim Winery.

Viticultural Area Name

The place-name "Lake Wisconsin" was first used ca. 1917 to describe a widened section of the Wisconsin River that was submerged when the Baraboo hydroelectric dam was constructed one mile upriver from the town of Prairie-du-Sac. A travel brochure and map produced by the Lake Wisconsin Chamber of Commerce in 1989, entitled *Lake Wisconsin Chamber Recreation Area Vacationland*, shows various recreational and tourist facilities in the Lake Wisconsin viticultural area. The viticultural area has a long history of wine grape growing and wine making activity. Agoston Haraszthy, an immigrant from Hungary well known as an early pioneer in the American wine industry, first planted wine grapes on

Wollersheim Winery property in 1847. Cold winter temperatures frustrated this early attempt to establish grapevines and two years later Haraszthy moved to California. However, wine grape growing and wine making continued in this area until 1900. Because of its role in the early history of Wisconsin, Wollersheim Winery and the adjacent homestead were listed on the National Register of Historic Places in 1976.

Evidence of Boundaries

The boundaries of the Lake Wisconsin viticultural area are clearly shown on two U.S.G.S. quadrangle maps, Sauk City, Wisc. and Lodi, Wisc. The Sauk City, Wisc. quadrangle map shows the viticultural area to be bounded by the shoreline of Lake Wisconsin and the Wisconsin River on the north and west. The southern boundary is defined by Mack Road and State Highway Y, and the eastern boundary, shown on the Lodi, Wisc. quadrangle map, follows State Highway Y, State Highway 60, State Highway 113, and Spring Creek. The petitioner states that some of the natural boundary features, which closely approximate some of the roads and highways used as boundaries for this viticultural area, can be found on county maps, plat maps and county atlases dating back to 1861.

Geographical Features

The Wisconsin River (of which Lake Wisconsin is a part) is a major natural feature of the State and of the region. It is the largest river in the State after the Mississippi River, of which it is a major tributary. Roads and highways define the southern boundary of the Lake Wisconsin viticultural area. The landscape of the viticultural area is comprised of discontinuous end moraines interspersed with ground moraines and occasional outwash plains. The landscape outside the southern boundary is of higher elevation and is comprised of rolling, hummocky upland with some outwash material. The eastern boundary, which closely approximates Spring Creek, identifies an area of low relief, continuous and intermittent stream drainage, and marsh. To the east of Spring Creek and outside the viticultural area is a glaciated upland plain where the landscape is generally of higher elevations and comprised of end moraines with little or no outwash material.

Topography and Elevation

The vineyards in the viticultural area are located at an elevation of 800-900 feet along south and southwest facing slopes of 10-40 percent gradient. This

combination of elevation, aspect, and relief contributes to the well-drained quality of the vineyard soils, the free circulation of air in summer and winter, and the locally longer growing season. Outside the viticultural area to the north and west, higher elevations of 900–1,200 feet increase the risk of wind damage to grapevines, or the soils become too shallow for successful grape cultivation where bedrock is nearer the surface or exposed. Outside the viticultural area to the east, elevations between 720 feet (Wisconsin River level) and 800 feet are generally less well drained or are saturated during periods of rainfall or snowmelt.

Climate

The Lake Wisconsin viticultural area benefits from the microclimate effects of the lower Wisconsin River valley. The river moderates winter temperatures in the viticultural area several degrees higher than areas north and west of the river or further south. Air circulation within the river valley helps prevent cold air accumulation and frost pockets from forming in the vineyards. In summer, the river valley and limestone bluffs along the river's edge serve to channel air currents and increase localized air circulation, protecting the vineyards from mildew and rot in hot, humid weather.

The viticultural area has a mean precipitation of twenty-nine inches, one inch less than the average rainfall in the area north and east, three inches less than the average rainfall in the area to the west, and two inches less than the State average. The petitioner describes the viticultural area as an "island" of locally below-average rainfall and drier soils conducive to the grapevines concentrating their vigor in ripening fruit. The viticultural area has a growing season of 140–160 days, ten to twenty days longer than across the river to the west and to the north. The additional frost-free period allows the grapes to reach maturity before the onset of winter cold.

Soil

The Wisconsin River forms an approximate dividing line between the glaciated and unglaciated regions of south-central Wisconsin. Soils primarily of glacial till and outwash material are found east of the river valley and characterize the soils in the viticultural area. The unglaciated "driftless" soils west of the valley result from significant differences in soil parent materials, microrelief, and drainage. The soils that support viticulture within the viticultural area are Typic Hapludalfs of mixed mineral material and silty or

loamy texture. All are underlain by gravelly or sandy loam glacial till or by dolomitic bedrock. The soils are typically well drained and about 36–60 inches deep on slopes and rolling areas of 2–45 percent gradient. The soils outside the viticultural area to the north and west are predominately unglaciated, and so are not underlain by glacial till and contain less outwash material. The soils outside the area to the south and east, although glacially derived, are found on topography of rolling upland with fewer limestone outcrops and no outwash plains. The soils there have formed on slightly higher elevations over discontinuous end and ground moraines.

Viticultural Area Boundary

The boundary of the Lake Wisconsin viticultural area may be found on two United States Geological Survey (U.S.G.S.) maps with a scale of 1:24,000. The boundary is described in § 9.146.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action, because

(1) It will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. This process merely allows wineries to more accurately describe the origin of their wines to the consumers, and helps consumers identify the wines they purchase. Designation of a viticultural area itself has no significant economic impact because any commercial advantage can come only from consumer acceptance of wines

made from grapes grown within the area. In addition, no new recordkeeping or reporting requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 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 Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

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

Authority and Issuance

Accordingly, Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.146 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.146 Lake Wisconsin.

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

(b) *Approved maps.* The appropriate maps for determining the boundary of the "Lake Wisconsin" viticultural area are two U.S.G.S. 7.5 minute series topographical maps of the 1:24,000 scale. They are titled:

- (1) "Sauk City, Wis.," 1975; and
- (2) "Lodi, Wis.," 1975.

(c) *Boundary.* The Lake Wisconsin viticultural area is located in Columbia and Dane Counties, Wisconsin. The boundary is as follows:

(1) The point of beginning is on the "Lodi, Wisc." U.S.G.S. map in the northeast quarter-section of section 17, Lodi Township, Columbia County, where Spring Creek enters Lake Wisconsin;

(2) From the point of beginning, follow the southern shoreline of Lake Wisconsin northwest to where Lake

Wisconsin narrows and becomes the Wisconsin River on the map, in the vicinity of the town of Merrimac, Sauk County;

(3) Then continue along the southern shoreline of the Wisconsin River, west and south past Goose Egg Hill, Columbia County, on the "Sauk City, Wisc." quadrangle map, and then west to a southwest bend in the shoreline opposite Wiegands Bay, Sauk County, where the Wisconsin River becomes Lake Wisconsin again on the map;

(4) Then southwest and south along the eastern shoreline of Lake Wisconsin, to the powerplant that defines where Lake Wisconsin ends and the Wisconsin River begins again;

(5) Then continuing south along the Wisconsin River shoreline to where it intersects with U.S. Highway 12 opposite Sauk City, Sauk County;

(6) Then in a southeasterly direction on U.S. Highway 12 to the intersection at State Highway 188, just over one-half a mile;

(7) Then in a northeasterly direction about 1,000 feet on State Highway 188, to the intersection of Mack Road;

(8) Then east on Mack Road to the intersection of State Highway Y, about 3 miles;

(9) Then follow State Highway Y in a generally northeasterly direction onto the "Lodi, Wisc." quadrangle map and continue in a northeasterly direction to the intersection with State Highway 60;

(10) Then in a northeasterly direction on State Highway 60 to the intersection with State Highway 113 in the town of Lodi;

(11) Then in a northwesterly direction on State Highway 113 to where it crosses Spring Creek the second time just before Chrislaw Road;

(12) Then follow Spring Creek in a northwesterly direction to where it enters Lake Wisconsin, the point of beginning.

Dated: November 24, 1993.

Daniel R. Black,
Acting Director.

Approved: December 17, 1993.

John P. Simpson,
Deputy Assistant Secretary, (Regulatory,
Tariff and Trade Enforcement).

[FR Doc. 94-147 Filed 1-4-94; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas' Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Arkansas abandoned mine land reclamation plan (hereinafter referred to as the "Arkansas plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to the Arkansas statute pertaining to the eligibility of project sites for abandoned mined land (AML) funds. The amendment is intended to revise the Arkansas plan to be in compliance with SMCRA.

EFFECTIVE DATE: January 5, 1994.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

- I. Background on the Arkansas Plan
- II. Submission of Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background on the Arkansas Plan

On May 2, 1983, the Secretary of the Interior approved the Arkansas plan. General background information on the Arkansas plan, including the Secretary's findings, the disposition of comments, and the approval of the Arkansas plan can be found in the May 2, 1983, Federal Register (48 FR 19710).

II. Submission of Amendment

By letter dated October 6, 1993 (Administrative Record No. AAML-18), Arkansas submitted a proposed amendment to its plan pursuant to SMCRA. Arkansas submitted the proposed amendment in response to a required program amendment at 30 CFR 904.26(a) that was placed on the Arkansas plan when OSM approved Arkansas' March 31, 1993, plan amendment (58 FR 38532, July 19, 1993; Administrative Record No. AAML-17). Arkansas intended that this amendment be in compliance with section 402 of SMCRA.

Arkansas proposed to amend Arkansas Code Annotated (ACA) 15-

58-401(b)(2) that provides criteria for the determination of the eligibility of certain project sites for AML funding. Specifically, Arkansas proposed to require at ACA 15-58-401(b)(2) a finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on November 5, 1990.

OSM announced receipt of the proposed amendment in the November 1, 1993, Federal Register (58 FR 58313; Administrative Record No. AAML-25) and in the same notice opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment. The public comment period closed on December 1, 1993. No substantive comments were received. The public hearing, scheduled for November 26, 1993, was not held because no one requested an opportunity to testify.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15, the Director finds, as discussed below, that Arkansas' October 6, 1993, proposed plan amendment is in compliance with SMCRA.

OSM required at 30 CFR 904.26(a) that Arkansas submit a revision to ACA 15-58-401(b)(2) to limit operations eligible for AML funds because of insolvency of a surety company to those operations whose surety became insolvent during the time frame provided by section 402(g)(4)(B)(ii) of SMCRA. Section 402(g)(4)(B)(ii) of SMCRA, as revised by the Abandoned Mine Land Reclamation Act of 1990 (Pub. L. 101-508), provided that the period of time during which such an operation would be eligible for AML funds because of the insolvency of the surety company would begin on August 4, 1977, and end on the date of enactment of the revision to SMCRA, which was November 5, 1990. Because Arkansas revised ACA 15-58-401(b)(2) to specify a period of time beginning on August 4, 1977, and ending on November 5, 1990, ACA 15-58-401(b)(2) is no less stringent than section 402(g)(4)(B)(ii) of SMCRA, as revised by the Abandoned Mine Land Reclamation Act of 1990.

Therefore, the Director approves ACA 15-58-401(b)(2) and removes the required amendment at 30 CFR 904.26(a).