

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

(T.D. ATF-197 Re: Notice No. 533)

Mesilla Valley Viticultural Area

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

ACTION: Final rule; Treasury decision.

SUMMARY: This final rule establishes a viticultural area located between Dona Ana County in southern New Mexico and the west Texas border at El Paso County, Texas, to be known as the "Mesilla Valley." The southern boundary of the viticultural area reaches the U.S./Mexico border. The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of the "Mesilla Valley" as a viticultural area and subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries to better designate their specific grape-growing areas and where their wines come from, enabling consumers to better identify the wines they may purchase.

EFFECTIVE DATE: March 18, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, 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, 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.

Petition

ATF was petitioned by Mr. George Newman, President of the Las Cruces Chapter of the New Mexico Wine and Vine Society located at Las Cruces, New Mexico. The "Mesilla Valley" viticultural area is located in New Mexico and Texas. New Mexico State University, College of Agriculture and Home Economics located at Las Cruces, New Mexico also participated in gathering evidence for this viticultural area.

The viticultural area extends from Dona Ana County in southern New Mexico to El Paso County in the far western tip of Texas. The viticultural area follows the Mesilla Valley along the Rio Grande River from an area just north of Las Cruces, New Mexico, to El Paso, Texas. It consists of 445 square miles of land (284,800 acres) running along the Rio Grande River on which there are 3 commercial bonded wineries and 21 private grape-growers. Evidence provided by the petitioner states that there are approximately 40 acres of grapes devoted to viticulture in the Mesilla Valley viticultural area. Local forecasters estimate that during the next two years grape acreage in the Mesilla Valley is expected to increase substantially.

In response to this petition ATF published a notice of proposed rulemaking, No. 533, in the *Federal Register* on July 11, 1984, (49 FR 28260) proposing the establishment of the "Mesilla Valley" viticultural area.

After careful analysis of the evidence, ATF agrees that the viticultural area is distinguished from the surrounding areas based on the following evidence submitted by the petitioner:

(1) *Historical and current evidence regarding the name and boundaries.* (a) The Mesilla Valley derived its name from the Spanish explorer Don Juan de Onate, who, in 1598, found an Indian village on the present day site of Mesilla, New Mexico (located within the boundaries of the proposed viticultural area). He named the village "Trenquel de la Mesilla." Mesilla means "little table" and that description refers to the plateau on which the town is situated. The entire valley area is now known as the "Mesilla Valley."

(b) According to evidence provided by the petitioner and acknowledged by ATF, grapes have been planted in the Mesilla Valley for over 100 years. The first vineyards were planted in Dona Ana, the oldest settlement in the valley. The first grapes grown were of the Mission variety from Mexico.

(c) The area known as Mesilla Valley was depicted on a nineteenth century map, based on the explorations of 1849-1852, by Captain R.B. Marcy of the 5th U.S. Infantry, under orders from the U.S. War Department. A photocopy of that map was submitted by the petitioner. The area of the Mesilla Valley is also depicted on United States Geological Survey maps.

(d) According to a magazine article submitted by the petitioner, that appeared in "New Mexico Magazine" in March of 1982, the fertile Mesilla Valley was once dotted with wineries, typically small and family run.

(e) According to topographical maps submitted, elevations within the viticultural area range from approximately 3,700 feet to 4,200 feet above sea level. Elevations in the mountains outside of the viticultural area reach up to 8,700 feet above sea level. To the east of the Mesilla Valley viticultural area is the Fort Bliss Military Reservation. Also to the east are the Organ, Dona Ana and Franklin Mountains. To the west lie the Portillo, Robledo and Sierra de Las Uvas Mountains and the Aden and Sleeping Lady Hills. Much of the eastern and western boundaries are found along the 4,150 and 4,200 foot elevation contour lines. The petitioner claimed and ATF agrees that these contour lines appropriately mark the transition from valley-foothills to dry land mesas where water availability is poor and soil types differ notably. To the north lies the town of Tonuco where the river valley narrows. To the south lies the New Mexico, U.S.A.-Mexico (Chihuahua) international border. The area to the south in Mexico consists of mountains and arid plains.

(f) While most of the irrigated land in the viticultural area is found at less than 4,000 feet above sea level in elevation, some areas within it reach 4,200 feet above sea level. The higher mesa areas and mountainous elevations of the Mesilla Valley above 4,200 feet have been excluded from being within the boundaries of the viticultural area since very few grapes are grown in these locations.

The irrigation water available from the Rio Grande River watershed surrounds most of the prime farmland that makes up the viticultural area. At the higher elevations of the viticultural area, water must be pumped from wells to irrigate the land.

(g) The grape growing revival in the Mesilla Valley was first observed in the 1960's and has progressed in recent years. More than 50 different grape varieties have been grown in the valley

over the years. Some of the grape varieties grown within the boundaries of the viticultural area include Colombard, Riesling, Cabernet Sauvignon, Ruby Cabernet, Zinfandel, Chenin Blanc and Barbera.

(h) The boundaries of the Mesilla Valley viticultural area can be found on 15 U.S.G.S. 7.5 minute series quadrangle maps (Anthony, N. Mex.-Tex., Bishop Cap, N. Mex., Black Mesa, N. Mex., Canutillo, Tex.-N. Mex., Dona Ana, N. Mex., La Mesa, N. Mex., La Union, N. Mex.-Tex., Las Cruces, N. Mex., Leasburg, N. Mex., Little Black Mountain, N. Mex., Picaho Mountain, N. Mex., San Miguel, N. Mex., Smelertown, Tex.-N. Mex., Strauss, N. Mex.-Tex. and Tortugas Mountain, N. Mex.). The boundaries of the Mesilla Valley viticultural area are described in § 9.100(c). After carefully considering the boundaries and name of the viticultural area and supporting evidence submitted by the petitioner, ATF is adopting the Mesilla Valley viticultural area boundaries and name stated in the notice of proposed rulemaking and found in this final rule.

(2) *Evidence of the geographical characteristics which distinguish the Mesilla Valley viticultural area from the surrounding areas.* (a) *Soils.* The petitioner claimed and ATF agrees that the soils found within the Mesilla Valley differ from those found in the surrounding mountain, foothill and dry mesa land areas outside of the viticultural area. The soil associations within the viticultural area are predominantly derived from the Glendale-Harkey series. Soils from the Glendale-Harkey series are stratified, deep, well drained, nearly level soils that are formed in alluvium. The surface layer is loam or clay loam and the layers below are clay loam and very fine sandy loam. These soils are formed on flood plains and stream terraces.

Soils to the east and west of the viticultural area tend to be more steeply sloped and contain more sand and stone. At the higher mountainous elevations located outside of the viticultural area the soil is formed in residuum from sandstone. It contains rock out-croppings and is generally shallower. It tends to be hilly to extremely steep and contains igneous rock land and limestone rock land associations.

(b) *Climate.* According to information provided by the petitioner, the Mesilla Valley tends to have minimum temperatures as much as 5-10° cooler than the surrounding mesa regions. Weather data recorded at New Mexico State University's National Weather Service Station at Las Cruces in the

Mesilla Valley was compared with weather data gathered from the Hatch, Deming and Jornada Experimental Range (National Weather Service) Stations and from the White Sands Missile Range (U.S. Government military installation), all of which are located outside of the viticultural area. Temperature differences between the Mesilla Valley and the surrounding areas were evident. To the north of the viticultural area at the Hatch Station, temperature fluctuations between daily maximums and minimums were wider. There were fewer heating degree-days (4,317) in Hatch versus 4,553 degree-days at Las Cruces (New Mexico State University's National Weather Service Station) which is located in the viticultural area.

To the west of the Mesilla Valley, at the Deming Station, the elevation was about 4,330 feet above sea level. At this location there were slightly fewer degree-days (4,541 days) and the growing season was, on the average, one week shorter.

To the northeast, at the Jornada Experimental Range Station, daily minimum temperatures were lower than at State University (Las Cruces). At Jornada there was an average of 138 days per year when the temperature fell below 32 °F. and only 1 day in 10 years when the temperature fell below 0 °F.

To the east of the Mesilla Valley, at the headquarters of the White Sands Missile Range, which is located on the mesa above the valley floor, minimum temperatures averaged 5-10 °F. warmer throughout the year. This climatic data results in a longer growing season and more degree days within the viticultural area than is found in the surrounding areas.

(c) *Distinct Valley Area of the Rio Grande River watershed.* The petitioner provided evidence and ATF agrees that the Mesilla Valley is a historically recognized valley area that is part of the Rio Grande River watershed. The Mesilla Valley viticultural area consists of approximately 445 square miles of distinctly identified valley land that runs entirely along the Rio Grande River. Since irrigation water in the Mesilla Valley comes from the Rio Grande River watershed, most of the prime farmland is found along the river. Although the viticultural area has little annual rainfall, the Rio Grande River watershed and its dams, drains, canals, laterals, wells, irrigation ditches, and pipelines for drip irrigation serve to irrigate the surrounding fertile land areas of the Mesilla Valley.

Nineteenth century historical maps and current U.S.G.S. maps reviewed by ATF, depict the unique geographical

valley area known as "Mesilla Valley." The southern border of the valley runs along the New Mexico, U.S.A.-Mexico border. The western border of the valley is marked by the Portillo, Robledo and Sierra de Las Uvas Mountains, the Aden Hills and the Sleeping Lady Hills. The northern border of the valley ends at Tonuco where the river valley narrows. To the east, the valley is flanked by the higher elevations of the Dona Ana, Organ and Franklin Mountains.

(d) *Drip Irrigation method.* Since water availability in the southwest United States is limited because of natural arid conditions, the drip irrigation method of watering grape vines is rapidly becoming more widely used in the Mesilla Valley. Drip irrigation is the frequent, slow application of water to soil through mechanical devices called emitters that are located at selected points along water-delivery lines. Drip irrigation is done by a system consisting of emitters, lateral lines, main lines and a "head" or control system. Drip irrigation can reduce operating costs, and this has been the main reason for adopting this new method in the Mesilla Valley. Drip systems can irrigate crops with significantly less water than is required by other more common irrigation methods. The irrigation of grape vines can be achieved by hosing or draping them over the irrigation ditches. At the higher elevations within the viticultural area, water must be pumped from wells through pipelines to irrigate the land. According to evidence provided by the petitioner and verified by ATF, annual rainfall is minimal in the Mesilla Valley and because of this fact drip irrigation will be used more often in this grape-growing area.

As a result of the combined evidence provided by the petitioner, ATF finds the "Mesilla Valley" viticultural area to be a delimited grape-growing region distinguishable by geographical features.

Discussion of Comments

In Notice No. 533, ATF invited comments from interested parties regarding the boundaries of the viticultural area. ATF was particularly interested in receiving comments on the inclusion of the land areas in Texas within the boundaries of the viticultural area since they are mostly urban areas and show no evidence of grape growing. ATF received no comments on the boundaries. However, ATF did receive one comment supporting the evidence in the notice of proposed rulemaking from Mr. William P. Stephens, Secretary of the Department of Agriculture for the

State of New Mexico. Mr. Stephens stated that approval of the Mesilla Valley as a viticultural area would encourage the continued expansion of the local wine industry. Mr. Stephens went on to say that the Mesilla Valley has favorable grape-growing conditions on irrigated acreages within the valley which have distinct soils and climatic conditions from the surrounding foothills and dry mesa lands. Mr. Stephens said that wines produced from grapes grown in this area will be unique and the use of the name Mesilla Valley in labeling and advertising will help the wine industry develop and aid the consumer to identify the wines they purchase. ATF agrees that the evidence provided by the petitioner and the statements made by the commenter, Mr. Stephens, justifies that the "Mesilla Valley" is entitled to be designated as an American viticultural area.

Miscellaneous

ATF does not wish to give the impression by approving the "Mesilla Valley" as a viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct and not better than other areas. By approving this area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of "Mesilla 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 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 nor compliance burdens on a substantial number of small entities.

Compliance With Executive Order 12291

It has been determined that this final rule is not classified as 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 geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises 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 proposed.

Disclosure

A copy of the petition and the one comment received 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 20226.

Drafting Information

The principal author of this document is Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative Practice and Procedure, Viticultural Areas, Consumer Protection, and Wine.

Authority

Accordingly, under the authority in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 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 § 9.100 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.
* * * * *
9.100 Mesilla Valley.

Par. 2. Subpart C is amended by

adding § 9.100 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *
§ 9.100 Mesilla Valley.

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

(b) *Approved maps.* The appropriate maps for determining the boundaries of Mesilla Valley viticultural area are 15 U.S.G.S. quadrangle 7.5 minute series maps. They are entitled:

- (1) "Anthony, N. Mex.-Tex.," 7.5 minute series, edition of 1955;
- (2) "Bishop Cap, N. Mex.," 7.5 minute series, edition of 1955;
- (3) "Black Mesa, N. Mex.," 7.5 minute series, edition of 1978;
- (4) "Canutillo, Tex.-N. Mex.," 7.5 minute series, edition of 1955 (photorevised 1967);
- (5) "Dona Ana, N. Mex.," 7.5 minute series, edition of 1978;
- (6) "La Mesa, N. Mex.," 7.5 minute series, edition of 1955;
- (7) "La Union, N. Mex.-Tex." 7.5 minute series, edition of 1955;
- (8) "Las Cruces, N. Mex.," 7.5 minute series, edition of 1978;
- (9) "Leasburg, N. Mex.," 7.5 minute series, edition of 1978;
- (10) "Little Black Mountain, N. Mex.," 7.5 minute series, edition of 1978;
- (11) "Picacho Mountain, N. Mex.," 7.5 minute series, edition of 1978;
- (12) "San Miguel, N. Mex.," 7.5 minute series, edition of 1955;
- (13) "Smelertown, Tex.-N. Mex.," 7.5 minute series, edition of 1955 (photorevised 1967 and 1973);
- (14) "Strauss, N. Mex.-Tex.," 7.5 minute series, edition of 1955; and
- (15) "Tortugas Mountain, N. Mex.," 7.5 minute series, edition of 1955.

(c) *Boundaries.* The Mesilla Valley viticultural area is located within Dona Ana County, New Mexico, and El Paso County, Texas. The boundaries are as follows: The beginning point is at the Faulkner Canyon on the "Leasburg, N. Mex." U.S.G.S. map at the northwest corner of Section 15, Township 21 South (T21S), Range 1 West (R1W).

(1) From the beginning point, the boundary runs east 3.7 miles along the north section line until it converges with the 4,200 foot elevation contour line at Section 18, T21S/R1E;

(2) Then it runs southeasterly 31 miles along the 4,200 foot elevation contour line to a point approximately 3.5 miles

south of Bishop Cap where it intersects the Fort Bliss Military Reservation boundary at the northeast portion of Section 13, T25S/R3E on the "Bishop Cap, N. Mex." U.S.G.S. map;

(3) Then it follows the Fort Bliss Military Reservation boundary south for approximately 3.7 miles and east approximately .8 mile to the intersection with the 4,200 foot elevation contour line at the southeast portion of Section 6, T26S/R4E on the "Anthony, N. Mex.-Tex." U.S.G.S. map;

(4) Then it runs south along the 4,200 foot elevation contour line for approximately 20 miles until it intersects the La Mesa Road (Mesa Avenue) in the city limits of El Paso, Texas, on the "Smelertown, Tex.-N. Mex." U.S.G.S. map;

(5) Then it heads south on the La Mesa Road (Mesa Avenue) for 1.2 miles until it meets Executive Center Boulevard that goes to La Guna/Smelertown;

(6) Then it travels in a southwesterly direction for 1.1 miles on Executive Center Boulevard to La Guna/Smelertown until it crosses the Southern Pacific Railroad tracks at Smelertown, Texas;

(7) Then it proceeds back into New Mexico northwesterly along the Southern Pacific Railroad tracks approximately 12.5 miles to a point near the switch yards at Strauss, New Mexico, where it intersects the 4,100 foot elevation contour line at the center of Section 24, T28S/R2E on the "Strauss, N. Mex.-Tex." U.S.G.S. map;

(8) Then it follows the 4,100 foot elevation contour line in a northwesterly direction for 17 miles until it intersects with the south section line of Section 29, T25S/R2E, on the "Little Black Mountain, N. Mex." U.S.G.S. map;

(9) Then it runs westerly approximately .5 mile along the south section line until it meets the 4,150 foot elevation contour line at Section 29, T25S/R2E;

(10) Then it follows the 4,150 foot elevation contour line northward for 15 miles until it meets with Interstate Highway 70/80/180 at the southeast corner of Section 19, T23S/R1E, on the "Las Cruces, N. Mex." U.S.G.S. map;

(11) Then it runs southwest along Interstate Highway 70/80/180 for approximately .9 mile until it reaches the 4,200 foot elevation contour line at the northwest corner of Section 30, T23S/R1E, on the "Picacho Mt., N. Mex." U.S.G.S. map;

(12) Then it meanders in a northerly direction on the 4,200 foot elevation contour line for 15 miles until it reaches the section line at the southwest corner

of Section 15, T21S/R1W on the "Leasburg, N. Mex." U.S.G.S. map;

(13) Then finally it goes north along the section line to Faulkner Canyon until it meets with the northwest corner of Section 15, T21S/R1W, which is the beginning point.

Signed: January 9, 1985.

Stephen E. Higgins,
Director.

Approved: January 31, 1985.

Edward T. Stevenson,
Deputy Assistant Secretary (Operations).
[FR Doc. 85-3777 Filed 2-13-85; 8:45 am]
BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Employment and Training Administration

Office of Human Development Services

29 CFR Part 56

45 CFR Part 224

Work Incentive Program for AFDC Recipients Under Title IV of the Social Security Act

AGENCIES: Employment and Training Administration, Labor, and Office of Human Development Services, HHS.

ACTION: Final rules with comment period.

SUMMARY: The Secretary of Labor and the Secretary of Health and Human Services jointly are revising the regulations for the Work Incentive Program (WIN). (See 29 CFR Part 56 and 45 CFR Part 224). These rules implement changes made in the WIN Program by the Deficit Reduction Act of 1984 (DRA), Pub. L. 98-369. Other changes in the AFDC program made by the DRA have been published separately by the Social Security Administration in the Department of Health and Human Services (49 FR 35586, September 10, 1984).

EFFECTIVE DATE: The provisions of 29 CFR 56.20(b)(12) and 56.51(b)(1) and 45 CFR 224.20(b)(12) and 224.51(b)(1) are effective on October 1, 1984 as required by the statute. The provisions of 29 CFR 56.20(b)(13) and 45 CFR 224.20(b)(13) were effective on the date of enactment of the statute, July 18, 1984. Consideration will be given to comments received on or before April 15, 1985.

ADDRESSES: Mail or deliver comments to the Executive Director, Work Incentive Program, Patrick Henry Building Room 8028, 601 D Street, NW., Washington, D.C. 20213. Agencies and organizations are requested to submit comments in duplicate. Beginning February 28, 1985 these comments will be available for public review at the above address between the hours of 9 a.m. and 4 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: William Kacvinsky, (202) 376-6890.

SUPPLEMENTARY INFORMATION:

Background

The Work Incentive Program (WIN) was established by amendments to Title IV (Parts A and C) of the Social Security Act in 1967, Pub. L. 90-248. The purpose of the program is to: (1) Assist AFDC recipients in finding employment, (2) train them to work, and (3) assist them in participating in on the job training and public service employment thus restoring them and their families to economic independence and useful roles in their communities. All persons applying for AFDC must register for WIN unless specifically exempt by law.

WIN is administered jointly, at the Federal level, by the Employment and Training Administration of the Department of Labor and the Office of Human Development Services in this Department. At the State and local levels, the program is operated jointly by the State employment services agencies and the public welfare agencies. The State employment services agencies register AFDC applicants and recipients for the program; appraise their work skills, provide labor market information; and arrange for on the job training, remedial education, job development, employment assistance, and job placement. The public welfare agencies arrange for employment related social services, including child care, counseling, health care, and other social services.

Summary of 1984 Amendments

Sections 2631 and 2634 of the Deficit Reduction Act of 1984 (DRA) include provisions which affect WIN exemption criteria and sanction policy. Section 2631 provides a new exemption for pregnant women beginning with the sixth month of pregnancy. Section 2634 modifies the protective payment requirement in sanction cases. It permits a sanctioned caretaker relative to continue to receive the AFDC payment on behalf of the remaining members of