

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-351; Re: Notice No. 777, T.D. ATF-295, 92F-080P]

RIN AA07

Realignment of the Northern Boundary of the Mt. Veeder Viticultural Area

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

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule revises the northern boundary of the Mt. Veeder viticultural area to include vineyard land that is similar to land in the current Mt. Veeder viticultural area which was established on February 20, 1990, by the issuance of Treasury Decision ATF-295 [55 FR 5842]. The boundary revision adds approximately 360 acres, of which 30 acres are being planted to vineyards. The addition to the Mt. Veeder viticultural area is located northwest of the city of Napa in Napa County, on the eastern slope of the Mayacamas Mountains, adjacent to the current northern boundary of the viticultural area.

EFFECTIVE DATE: January 12, 1994.

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

SUPPLEMENTARY INFORMATION:

Background

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 geographic features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2), title 27, CFR, 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 (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF received a petition from Mr. Robin Williams for a revision of the northern boundary of the Mt. Veeder viticultural area to include vineyard land that was not included when the viticultural area was established by Treasury Decision ATF-295 on February 20, 1990.

The petitioner stated that the vineyards located in the extension area were planted after the viticultural area was established, and he believes the omission of this area was an oversight. As evidence, the petitioner presented documentation supporting the boundary revision from the original petitioner for the Mt. Veeder viticultural area, the present Chairperson of the Mt. Veeder Appellation Council, and the same experts in soil and climate who reviewed the original petition.

The addition to the Mt. Veeder viticultural area is located in Napa County, California, on the eastern slope of the Mayacamas Mountains that separate Napa Valley and Sonoma Valley. Situated contiguous to the northernmost boundary of the current viticultural area, the addition contains approximately 360 acres, of which 30 acres are being planted to vineyards, a project that began in 1990.

As far as can be ascertained, no vineyards are situated or planned north of the proposed boundary on the eastern slope of the Mayacamas Mountains for a distance of four miles, and the likelihood of new vineyards immediately north of the new boundary is remote, due to the extreme ruggedness of terrain, the difficulty of access, and a lack of appropriate soils.

Notice of Proposed Rulemaking

In response to the petition, ATF published Notice No. 777 in the *Federal Register* on August 19, 1993 [58 FR 44152], proposing to revise the northern

boundary of the Mt. Veeder viticultural area to include vineyard land that is similar to land in the current Mt. Veeder viticultural area which was established on February 20, 1990, by the issuance of Treasury Decision ATF-295. This notice requested comments from all interested persons. Written comments were to be received on or before October 4, 1993. No comments were received in response to Notice No. 777.

Evidence That the Name of the Area Is Locally or Nationally Known

The derivation of the name "Mt. Veeder," as well as evidence of the region's local and national renown, were detailed in the Mt. Veeder viticultural area petition submitted to the Bureau of Alcohol, Tobacco and Firearms in January of 1988, and summarized in the Treasury decision for the Mt. Veeder viticultural area, published in the *Federal Register* on February 20, 1990.

A statement from long-time resident Duane Wall indicates that Wall Road in its entirety (including the northern portion that extends into the addition) is recognized as being part of Mt. Veeder by those who live there and the statement indicates that such recognition existed as early as the 1920's.

An article which appeared in The Napa Daily Register of March 26, 1880, tends to support Mr. Wall's statement. The article states, "At the distance of ten or eleven miles an elevated point is reached where the views of mountain masses and ridges near at hand, and of Napa Valley with the bay and Mt. Diablo in the distance, are most charming. The wooded plateau of Howell Mountain to the northeast of Napa Valley and the great mass of Mt. Veeder with its rocky and partially wooded crest and summit and its finely varied slopes descending eastward down to Dry Creek, will particularly attract the eye."

Additional name evidence submitted by the petitioner shows that the Mt. Veeder area does not extend beyond Dry Creek. The LaJoya quicksilver mine (originally called the Summit mine), which operated sporadically from 1865 to 1942, is located approximately 6/10 mile north of Dry Creek, yet has never been associated with the Mount Veeder region in print.

An article published in the California Journal of Mines and Geology of January, 1949, entitled, "Quicksilver Deposits of the Oakville District, Napa County, California," clearly identifies this mine with Mount St. John, not Mt. Veeder. The article states that, "The old 1,000 by 2,400-foot Summit claim was

located March 27, 1865 by M. S. Whitton, C. I. Whitton, R. I. Whitton, I. M. Whitton, W.T. Whitton, W.H. Whitton, and F.I. (?) Corning of Yountville, apparently on the summit of the mountain ridge that extends northwest from Mount St. John." Moreover, the earthquake fault that runs east/west along the southern slope of Mount St. John north of the proposed boundary is known as the Mount St. John's Fault. The use of Mount St. John as both a landmark and the name source for features immediately north of the proposed Dry Creek boundary indicates that the Mt. Veeder viticultural area does not extend north of Dry Creek.

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

Primary access to the addition is from the Mt. Veeder viticultural area by way of Wall Road. The statement from Mr. Duane Wall shows that the northern terminus of Wall Road, which the revised boundary incorporates into the Mt. Veeder viticultural area, is served by two local organizations that encompass virtually all of Mt. Veeder: The Dry Creek—Lokoya Fire District, and the Hill and Dale Club (a local social club). That these two local organizations should independently include the full length of Wall Road in their activities and memberships indicates that the addition is within the area known as Mt. Veeder.

The expansion of the Mt. Veeder viticultural area is supported by vintners and growers currently within the viticultural area. The petition contains a letter from Mr. Donald Hess and Mr. Clement Firko of The Hess Collection, the winery that led the effort to establish the Mt. Veeder viticultural area in 1988, and Ms. Ariel Rubissow, chairperson of the Mt. Veeder Appellation Council. These letters reflect the general support that this proposed boundary revision has received from within the Mt. Veeder viticultural community.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, etc.) Which Distinguish Viticultural Features of the Proposed Area From Surrounding Areas

The addition to the Mt. Veeder viticultural area contains the same geographical features that distinguish the viticultural area as currently established. The geographical elements of soil, climate, elevation and exposure found in the addition to the Mt. Veeder viticultural area are detailed and compared to those in the current viticultural area in two reports

submitted with the petition and discussed below. Both reports were prepared by the same experts who studied and reported on Mt. Veeder in the initial rulemaking. As such, the experts are already familiar with the geographic features of the present viticultural area and have the best possible background to compare and contrast the addition.

The soil report on the addition to the Mt. Veeder viticultural area was prepared by Eugene L. Begg. Mr. Begg has been a member of the California Soil Survey Committee since 1974 and has reviewed new and revised soil series descriptions for the National Cooperative Soil Survey since 1970. Mr. Begg's writings on soil and vegetation have been widely published. He has served as an expert consultant on a variety of soil matters in both regulatory hearings and legal cases.

The climatic overview of the viticultural area addition was prepared by Michael Pechner. Since 1968, Mr. Pechner has headed Golden West Meteorology of Fairfield, California. In that capacity, he has served as staff meteorologist for KCBS Radio in San Francisco, weather consultant for KTW Television in Oakland, and consulting meteorologist for Associated Press in San Francisco.

Soils

The northern extension boundary is a line of demarcation between different soil compositions and of aspect (*i.e.*, direction of the slope) and slope. A review of the supplementary information in T.D. ATF-295, indicates that the soil discussion basically focused on two points. First, it focused on the differences between the soils of the Napa Valley and the Mt. Veeder viticultural area. Second, it discussed in detail the soil differences between the northeast slope towards Napa County and the southwestern slope towards Sonoma County. None of the soil discussion in the supplementary information directly applied to the northern boundary. The background information supporting the original petition does state:

The soils of the proposed viticultural area are much different from the deep, alluvial soils of Napa Valley proper and the Los Carneros region and are equally differentiated from the soils in Sonoma Valley and to the north by geology and composition.

(Page 18 of original petition.)

However, as noted, this reference to the "north" was not carried over into the supplementary information. Additionally, this reference to the north

was included in the "Conclusion" portion of the original petition and the more lengthy soil portion of the original petition does not clearly draw this distinction (pages 11-14 of original petition). Thus, the following soil evidence for the proposed addition is not in direct conflict with the substantive soil information in the original petition or the description in the supplementary information in T.D. ATF-295.

The soils in the addition are residual upland soils from Pliocene volcanic rocks (andesite and rhyolite) and Cretaceous sedimentary rocks (sandstone and shales). All the soils in the addition are mapped in the Mt. Veeder viticultural area. These soils are: Boomer-Forward-Felta complexes, from andesite and rhyolite; Hambright-Rock Outcrop, from basic volcanic rocks; and Bressa-Dibble complexes and Maymen-Los Gatos complexes, from sandstone and shales. The Boomer-Forward-Felta and Maymen-Los Gatos extend from the original viticultural area into the addition.

Because the soils in the addition are also mapped in the Mt. Veeder viticultural area, locations appropriate to grapes have the soils with the same moderate depth to bedrock (30 to 60 inches) and the same limited available water holding capacity (four to ten inches) as those in the current viticultural area.

In the area beyond the boundary of the addition to the north and northeast, a greater degree of dissection and downcutting has entirely removed the volcanic capping of andesites and rhyolites to expose a large area of serpentine and older sandstone and shales of the Franciscan formation. The soils formed from serpentine are Henneke, while those from sandstone and shales are Bressa, Dibble, Felton, Lodo, Los Gatos, Maymem and Millsholm. The soils from sedimentary rocks are also mapped in the Mt. Veeder viticultural area and the addition, but in these areas, they are formed from younger sandstone and shales of the Cretaceous formation. With the exception of one small pocket of Henneke soils located near its southwestern boundary, no serpentine soils are mapped in the current Mt. Veeder viticultural area.

Aspect and Slope

In addition to geologic differences, the current Mt. Veeder viticultural area and the addition contrast sharply from land to the north and northeast in matters of aspect and slope. The aspect of the Mt. Veeder viticultural area proper and the addition is generally east-to-

northeasterly, far different from the generally southerly aspect of the land beyond the revised boundary. The slopes to the north of the revised boundary are also significantly steeper (30 percent to more than 70 percent) than those found in the current Mt. Veeder viticultural area or its addition, a difference which increases the speed of runoff and associated erosion. The differences in aspect and slope in the land north of the revised boundary are reflected in soils that are shallower and drier, with very different associated vegetation.

Climate

The addition's upland location on the eastern slope of the Mayacamas Mountains and range of elevations within the addition area are consistent with the current Mt. Veeder viticultural area. Both areas share the same characteristic cool, moist winters and warm, dry summers. Due to the similarity in location and relief, both areas also experience the same natural temperature inversion where the minimum temperature is higher than that on the floor of the Napa Valley during the summer and winter. This inversion keeps the addition, as well as the currently approved Mt. Veeder viticultural area, relatively frost free during the spring, when grape vines emerge from dormancy.

The location and elevation also give the addition the same rainfall profile as the current Mt. Veeder viticultural area. In describing the climate of the current Mt. Veeder viticultural area, T.D. ATF-295 states, "The region receives more rainfall than the land east, south and north of it due to the terrain forcing the moist air masses of winter storms upward as they move inland along a southeasterly path from the coast, causing condensation." This is the only climatic statement expressly concerning the northern boundary. A review of the background material in the rulemaking file on T.D. ATF-295, suggests that this comment is a very general comment about the rainfall in the Mt. Veeder viticultural area and was not intended to mean that the proposed northern boundary was a specific demarcation point for a change in the rainfall pattern (pages 15-17 of original petition).

The amount of rainfall throughout the current Mt. Veeder viticultural area varies significantly (that is, 25-65 inches of winter rainfall), so rainfall was not a major distinguishing factor in drawing the original boundaries of the area. Based on isohetal maps of Napa Valley, rainfall in the addition averages roughly 40 inches per year, well within the range of average annual rainfall

found within the current Mt. Veeder viticultural area. Thus, the boundary extension does not conflict with the previous climate data.

The predominantly eastern and northeastern exposures within the addition are similar to those in the current Mt. Veeder viticultural area. Such exposures enable the addition area to support the same mixed hardwood (oak, madrone, and laurels) and conifer (douglas fir and redwood) forest found in the current Mt. Veeder viticultural area at similar elevations.

In sharp contrast to the land in the addition, the region immediately north of the revised boundary, on the slopes Mount St. John and the ridge extending northeast from Mount St. John to the main crest of the Mayacamas Mountains, has primarily southern exposures. The microclimate created by this southern exposure, distinguished by warmer temperatures and lower humidities than those found in the current Mt. Veeder viticultural area or the addition, has resulted in quite different vegetation, dominated by brush and digger pine.

Summary of Geographic Features

In summary, the residual upland soils in the addition are the same sedimentary and volcanic types found in the current Mt. Veeder viticultural area. The soils are characterized by their moderate depth to bedrock and limited water holding capacity. The soils in the current viticultural area and the addition are differentiated from soils found to the north of the proposed boundary by geology, composition, depth and vegetation.

The climate in the addition is consistent with that in the current Mt. Veeder viticultural area, with the same cool, moist winters and warm, dry summers. Due to the similarity of location and relief, the addition experiences the same natural inversion as the current viticultural area, which keeps both relatively frost free during the spring, when grape vines emerge from dormancy and set their crop. The average annual rainfall in the addition is likewise within the range found in the current Mt. Veeder viticultural area.

The current Mt. Veeder viticultural area and the addition both have predominantly eastern and northeastern exposures, which support a mixed hardwood and conifer forest. In contrast, the land to the north of the addition has a predominantly southern exposure, with a microclimate of warm temperatures and low humidities that is reflected in very different vegetation, primarily brush and digger pine.

Miscellaneous

ATF does not wish to give the impression by approving the northern extension to the Mt. Veeder viticultural area that it is approving or indorsing 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 this area, ATF will allow wine producers 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 Mt. Veeder wines.

Regulatory Flexibility Act

It is hereby certified that this document will not have a significant economic impact on a substantial number of small entities. Any benefit derived by a small proprietor from the new options provided in this rule will be the result of the proprietor's own promotional efforts and consumer acceptance of the specific product. No new reporting, recordkeeping or other administrative requirements are imposed by this rule. Accordingly, a regulatory flexibility analysis is not required.

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, or 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.

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 David W. Brokaw, 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, Wine.

Authority and Issuance

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

PART 9—[AMENDED]

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

Authority: 27 U.S.C. 205.

Par. 2. Section 9.123 is amended by revising paragraphs (c)(1) and (c)(9) through (c)(11) and adding new paragraph (c)(12) to read as follows:

§ 9.123 Mt. Veeder.

* * * * *

(c) * * *

(1) Beginning at unnamed peak, elevation 1,820, on the common boundary between Napa County and Sonoma County in section 23, Township 7 North, Range 6 West, Mount Diablo Base and Meridian on the Rutherford, Calif. U.S.G.S. map:

* * * * *

(9) Thence northwesterly along Dry Creek through Sections 3 and 4 of Township 6 North, Range 5 West, and Sections 32 and 31 of Township 7 North, Range 5 West, to the fork of Dry Creek near the center of Section 25 of Township 7 North, Range 6 West;

(10) Continuing along the northern fork of Dry Creek through Sections 25 and 24 of Township 7 North, Range 6 West, to the point at which the main channel of Dry Creek ends and divides into three tributaries;

(11) Thence following the middle tributary of Dry Creek through Sections 24 and 23 of Township 7 North, Range 6 West, to its source at the intersection with a trail indicated on the map;

(12) Thence following a straight line west approximately 1/10 mile to the top of unnamed peak, elevation 1,820, the beginning point.

Signed: November 10, 1993.

Daniel R. Black,

Acting Director.

Approved: November 29, 1993.

John P. Simpson,

Deputy Assistant Secretary, Regulatory, Tariff and Trade Enforcement.

[FR Doc. 93-30320 Filed 12-10-93; 8:45 am]

BILLING CODE 4810-31-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Health Care Financing Administration****42 CFR Part 424**

[BPO-114-FC]

RIN 0938-AG16

Medicare Program; Intermediary and Carrier Checks That Are Lost, Stolen, Defaced, Mutilated, Destroyed or Paid on Forged Endorsements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This rule revises the Medicare regulations governing the procedures for replacing checks issued by our fiscal intermediaries and carriers that are lost, stolen, defaced, mutilated, destroyed, or paid on forged endorsements.

Each State already has an established legal process for pursuing a claim for recovery of the amount of a check paid on a forged endorsement, and it is inefficient and ineffective to provide duplicative Federal requirements. These regulations stipulate that any replacement or reclamation proceedings will be carried out in accordance with the applicable State law and that a replacement check will not be issued until Medicare has made recovery on the proceeds of the original check. However, we will continue to reissue checks that have not been negotiated.

DATES: Effective date: These regulations are effective on January 12, 1994.

Comment date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 11, 1994.

ADDRESSES: Mail written comments (an original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-114-FC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (an original and 3 copies) to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPO-114-FC. Comments received timely will be available for public

inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890). **FOR FURTHER INFORMATION CONTACT:** Sam Guida, (410) 966-7495.

SUPPLEMENTARY INFORMATION:**I. Background**

Under sections 1816(a) and 1842(a) of the Social Security Act (the Act), public or private organizations and agencies may participate in the administration of the Medicare program under agreements or contracts entered into with the Secretary. These Medicare contractors are known as fiscal intermediaries (section 1816(a) of the Act) and carriers (section 1842(a) of the Act).

Intermediaries perform bill processing and benefit payment functions for Part A of the program (Hospital Insurance) and carriers perform claims processing and benefit payment functions for Part B of the program (Supplementary Medical Insurance). When bills or claims are submitted, intermediaries and carriers are responsible for making appropriate benefit payments to the proper party.

Intermediaries and carriers, under the terms of their contracts with HCFA (acting for the Secretary), execute agreements for the processing of payments they issue and for the drawing of funds to cover those checks with commercial banks. The bank must be a member of the Federal Reserve System or insured by the Federal Deposit Insurance Corporation. These bank agreements, to which HCFA is also a party, provide for the establishment of a special account within the bank known as the Federal Health Insurance Benefits Account (the Account). Intermediaries and carriers may use the funds in the Account only for the purpose of making Medicare payments.

When a benefit check issued by the intermediary or carrier on the Account is presented to the bank, the bank processes the payment (pays the check). At the end of each business day, the bank presents a voucher to the Federal Reserve Bank in the amount of all checks drawn against the Account that day for credit to the Account. Intermediaries and carriers must submit monthly statements to HCFA showing the disbursements made from the Account.

Occasionally, payments to beneficiaries, physicians, providers and suppliers of services entitled to payment