

By direction of the Commissioner of Internal Revenue.

George H. Jelly,

Director, Legislation and Regulations Division.

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Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 468]

Pacheco Pass Viticultural Area

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in California to be known as "Pacheco Pass." This proposal is the result of a petition from Mr. H. G. Zanger, a grape grower in the area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will enable industry to label wines more precisely, and will help consumers to better identify the wines they purchase.

DATE: Written comments must be received by July 18, 1983.

ADDRESSES: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044-0385 (Notice No. 468)

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4405, Federal Building, 1200 Pennsylvania Avenue NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, D.C. 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 provide for 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.

Part 9 of 27 CFR provides for the listing of approved American viticultural

areas, the names of which may be used as appellations of origin.

Section 4.25(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. 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 features (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 boundaries prominently marked.

Petition

ATF has received a petition from Mr. H. G. Zanger of Pacheco Pass Vineyard, proposing an area near Hollister, California, as a viticultural area to be known as "Pacheco Pass." The area extends for a length of about 5 miles and a width of about 1 mile (3200 acres). It is located at the entrance to Pacheco Pass, by the junction of California Routes 152 ("Pacheco Pass Highway") and 156.

There are about 17 acres of grapes currently planted in the proposed area, and one bonded wine cellar is operating. The petitioner stated that he plans to construct a winery and to plant up to 600 additional acres of grapes on land that he currently owns in the area.

The petitioner claims that the proposed viticultural area is known by the name of Pacheco Pass" and is associated with grape growing for the following reasons:

(a) The name of the area derives from Don Francisco Pacheco, who in 1833 received a large land grant from the Mexican Government. The name of the land grant was "Rancho Pacheco," and the nearby pass over the Diablo Range took the name "Pacheco Pass."

(b) Don Pacheco made use of the area's unique microclimate to plant vineyards for his personal use. (This is

recounted in Dr. Alfred Shumate's book, "Francisco Pacheco of Pacheco Pass.")

(c) Later settlers continued this tradition. From 1936 to 1952, there was a 70,000 gallon winery operating within the area. At various times during this century, over 100 acres of land in the area have been planted to grapes. However, due to economic conditions, vine disease, and death of the owners, only one vineyard and one bonded wine cellar remain in operation today.

(d) Since 1976, the designation "Pacheco Pass Vineyard" has appeared on certain wine labels from Casa de Fruta. (Casa de Fruta is the bonded wine cellar in the proposed area, and "Pacheco Pass Vineyard" is the name of Casa de Fruta's 17-acre vineyard in the proposed area.)

The petitioner claims that the proposed viticultural area is distinguished from the surrounding areas for the following reasons:

(1) Pacheco Pass is a cut through the Diablo Range and has an approximate total length of 15 miles. The proposed Pacheco Pass viticultural area occupies only the southwestern one-third of that total length, because the rest is unsuitable for viticulture.

(2) The proposed viticultural area is distinguished on the basis of terrain from the surrounding areas to the east and west. The viticultural area is in a valley and generally has flat or gently sloping terrain; whereas to the east and west lie the rugged hills of the Diablo Range. Those hills are too steep for viticulture and are also distinguishable from the proposed viticultural area on the basis of soil types.

(3) As Pacheco Pass rises in elevation northeast of the proposed viticultural area, the soil changes markedly, becoming very shallow and rocky. Therefore, it is not suitable for any kind of cultivation and is used primarily as rangeland. For this reason, it has not been included within the proposed viticultural area even though it is associated with the name "Pacheco Pass." Furthermore, as the pass continues to rise in elevation, the climate changes, becoming wetter and subject to greater temperature extremes; then the pass narrows to where it is almost fully occupied by Pacheco Pass Highway and the shifting stream bed of Pacheco Creek. At this point (near Pacheco Lake) the pass is steep and forested.

(4) To the south, the proposed viticultural area is distinguished from the surrounding area on the basis of soil and climate. Outside the boundaries of the proposed viticultural area, the land is afflicted with high-perched water

tables and boron salts which affect the quality of water. In contrast, the proposed Pacheco Pass viticultural area is free from these defects, having a very good water table and good quality water from Pacheco Creek. Further, the viticultural area has more rainfall than the Hollister Basin to the south, and it enjoys more moderate temperatures due to the passage of winds through Pacheco Pass en route to the San Joaquin Valley.

Daytime temperature in the San Joaquin Valley may be 30° higher than at the ocean; this difference creates a venturi effect, and the air mass moves from the cool of the ocean to the heat of the interior valley, bringing cool breezes to the Pacheco Pass viticultural area. Pacheco Pass is the only pass south of Interstate Highway 580 (Altamont Pass) and north of San Luis Obispo. Consequently, consistently strong winds near the highest elevation Pacheco Pass have led the State of California to construct an experimental wind turbine there for the generation of electricity.

The boundaries of the proposed viticultural area may be found on two U.S.G.S. maps in the 7.5 minute series: San Felipe Quadrangle and Three Sisters Quadrangle. The boundaries are as described in the proposed § 9.88.

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 proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities, because the value of the proposed viticultural area designation is intangible and subject to influence by unrelated factors. Further, the proposal will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of Feb. 17, 1981, the Bureau has determined that this proposal is not a major rule since it will not result in:

- (a) An annual effect on the economy of \$100 million or more;
- (b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (c) Significant adverse effects on

competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Public Participation—Written Comments

ATF requests comments concerning this proposed viticultural area from all interested persons. Furthermore, while this document proposes possible boundaries for the Pacheco Pass viticultural area, comments concerning other possible boundaries for this viticultural area will be given consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Steve Simon, FAA, 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

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 revised to add the title of § 9.88. As revised, the

table of sections reads as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

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9.88 Pacheco Pass.

Paragraph 2. Subpart C of 27 CFR Part 9 is amended by adding § 9.88, which reads as follows:

§ 9.88 Pacheco Pass.

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

(b) *Approved maps.* The appropriate maps for determining the boundaries of Pacheco Pass viticultural area are two U.S.G.S. maps. They are titled;

(1) San Felipe Quadrangle, 7.5 minute series, 1955 (photorevised 1971).

(2) Three Sisters Quadrangle, 7.5 minute series, 1954 (photorevised 1971).

(c) *Boundary—(1) General.* The Pacheco Pass viticultural area is located in California. The starting point of the following boundary description is the crossing of Pacheco Creek under California Highway 156, about 4 miles north of Hollister Municipal Airport, in San Benito County, California.

(2) *Boundary Description—(i)* From the starting point northwestward along Pacheco Creek to the intersection with the straight-line extension of Barnheisel Road.

Note: This is an old land grant boundary and appears on the U.S.G.S. map as the western boundary of an orchard.

(ii) From there in a straight line northeastward to the intersection of Barnheisel Road and California Highway 156.

(iii) From there northward along Highway 156 to California Highway 152 ("Pacheco Pass Highway").

(iv) Then northward along Pacheco Pass Highway to the 37° latitude line.

(v) Then eastward along that latitude line to the land line R.5E./R.6E.

(vi) Then southward along that land line, crossing Foothill Road, and continuing southward to a point exactly 2,300 feet south of Foothill Road.

(vii) From there in a straight line to the starting point.

Approved: May 26, 1983.

W. T. Drake,

Acting Director.

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