

designed to both ensure compliance with its terms and to compensate the aggrieved party for any violation. The amendment to the carrier's bond providing for liquidated damages for violations concerning export-controlled merchandise accomplishes both of these objectives.

We also disagree with the comment that it would be more appropriate to amend Parts 4, 18 and 113, Customs Regulations, rather than the carrier's bond to ensure the carrier's compliance with the export control laws. It is administratively easier for Customs to have the new liquidated damages provision in one place—the bond—rather than to amend different Customs Regulations to provide for the same thing. Also having the provision in the bond itself would enhance enforcement efforts since it makes compliance with the export control regulations by the carrier a condition of the bond and therefore enforceable under the bond contract without having to resort to Customs or other agencies' regulations. Furthermore, it should be noted that Parts 4 and 18, Customs Regulations, for the most part concern importations into the U.S. It would be confusing to include this one provision dealing with exportations in these regulations.

Amending the international carrier's bond is also easier for the carriers since, to understand their obligations with respect to export-controlled merchandise, they would have to refer only to the provisions of their own bond, rather than to an agency's regulations.

*Comment:* Liquidated damages in an amount three times the value of the merchandise not redelivered is excessive. Damages should be assessed in an amount based on what the carrier receives in payment for transporting the merchandise. Also, the amendment should provide for mitigation.

*Response:* The purpose of liquidated damages under bonds is to recompense the Government for the damage it has suffered through failures to meet the obligations of the bonds. The measure of liquidated damages to be assessed for a failure to redeliver export-controlled merchandise is the damage suffered by the Government and the interest of the carrier in the cargo or the fault behind the failure to redeliver. We find that three times the value of merchandise not returned is not excessive for the damage that the Government would suffer to its export control program by a failure to redeliver.

Inasmuch as 19 U.S.C. 1623 allows for the cancellation of charges against a bond caused by breach of a condition upon payment of a lesser sum deemed sufficient, it is not necessary to provide

for mitigation in the rule. It is to be expected that guidelines will be formulated and implemented for these liquidated damages as they have been for other liquidated damages provisions.

After careful analysis of all the comments and further review of the matter, it has been decided to adopt the proposal with the modifications discussed. This amendment is necessary for more effective enforcement of the export control laws.

#### Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

#### Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

#### Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

#### List of Subjects in 19 CFR Part 113

Carriers, Exports, Bonds.

#### Amendment to the Regulations

Part 113, Customs Regulations (19 CFR Part 113), is amended as set forth below.

#### PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1623, 1624. Subpart E also issued under 19 U.S.C. 1484.

2. Section 113.64 is amended by adding a new paragraph (e) to read as follows:

#### § 113.64 International carrier bond conditions.

\* \* \* \* \*

(e) *Unlawful disposition.* (1) Principal agrees that it will not allow seized or detained merchandise, marked with warning labels of the fact of seizure or detention, to be placed on board a vessel, vehicle, or aircraft for exportation or to be otherwise disposed of without written permission from Customs, and that if it fails to prevent such placement or other disposition, it will redeliver the merchandise to Customs within 30 days, upon demand

made within 10 days of Customs discovery of the unlawful placement or other disposition.

(2) Principal agrees that it will act, in regard to merchandise in its possession on the date the redelivery demand is issued, in accordance with any Customs demand for redelivery made within 10 days of Customs discovery that there is reasonable cause to believe that the merchandise was exported in violation of the export control laws.

(3) Obligors agree that if the principal defaults in either of these obligations, they will pay, as liquidated damages, an amount equal to three times the value of the merchandise which was not redelivered.

William von Raab,

Commissioner of Customs.

Approved: September 17, 1987.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87-22934 Filed 10-2-87; 8:45 am]

BILLING CODE 4820-02-M

#### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Part 9

[T.D. ATF-258; Ref. Notice No. 628]

#### Establishment of Viticultural Area; San Benito

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

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

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) has decided to establish a viticultural area in San Benito County, California, to be known as "San Benito." This decision is the result of a petition submitted by Almaden Vineyards, a winery and grape grower in the area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising enables winemakers to label wines more precisely and helps consumers to better identify the wines they purchase.

**EFFECTIVE DATE:** November 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 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 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

#### Petition

ATF received a petition from Almaden Vineyards, proposing that a portion of San Benito County, California, be established as a viticultural area to be known as "San Benito." The area is located along and near the San Benito River, approximately two miles south of Hollister, California.

The area contains about 45,000 acres of land, of which approximately 2,500 are planted to grapes. The petitioner stated that at least three major wineries are operating within the area, and that approximately 23 different varieties of winegrapes are grown there.

The area is located inside the approved "Central Coast" viticultural area, and contains within it the approved "Paicines," "Cienega Valley," and "Lime Kiln Valley" areas. (See the discussion of overlapping viticultural areas below, under "Boundaries of the Area.")

#### Notice of Proposed Rulemaking

In response to the petition, ATF published a notice of proposed rulemaking, Notice No. 628, in the *Federal Register* on Friday, April 10, 1987 (52 FR 11689). That notice proposed establishment of the "San Benito" viticultural area and solicited public comment concerning the proposal.

#### Public Comment

No comments were received in response to the notice of proposed rulemaking. Accordingly, this Treasury decision establishes the "San Benito" viticultural area exactly as proposed in Notice No. 628.

#### Name of the Area

The association of the name "San Benito" with the new viticultural area goes back far into history. The San Benito River flows through the area, and one of the principal streets of nearby Hollister was already called "San Benito Street" in 1874, when the surrounding

territory, including the viticultural area, was organized as "San Benito County." (See *Crimes and Career of Tiburcio Vasquez*, San Benito County Historical Society, pp. nine and seventeen.) The town of San Benito is about 15 miles southeast of the area, and San Benito Mountain is about 30 miles farther southeast, near the source of the San Benito River and the eastern boundary of San Benito County.

The history of viticulture in the area was described by John P. Ohrwall in a talk given to the San Benito County Historical Society on July 29, 1965. A copy of the talk was submitted to ATF by the petitioner. In that talk, Mr. Ohrwall related that the first vineyard in San Benito County was planted near the new viticultural area by Theophile Vache in the early 1850's. Other vineyards were planted too, and the area where vineyards were sited became known locally as the "Vineyard District." Before the end of the nineteenth century, the vineyard planted by Vache had been named "San Benito Vineyard," and, under that name, wines made in the area "were said to have won prizes at various expositions and fairs, including some held in France and Italy" (quote from Ohrwall). Gradually, additional vineyards and wineries were established. In the 1950's, Almaden Vineyards arrived and began greatly expanding the area's grape acreage. Almaden soon became the dominant grape grower in the area.

Unfortunately, the original vineyard planted by Theophile Vache is no longer in production, because the soil in that vicinity has become permeated with boron salts. (See the discussion of boron below, under "Geography of the Area.") Thus, the original "San Benito Vineyard" is excluded from the new viticultural area for a geographical reason, but the name that this vineyard gave to the area remains.

Although there are some scattered grape plantings elsewhere in San Benito County, by far the preponderance of viticulture in that county is practiced in the viticultural area established by this Treasury decision. According to the petitioner, 95 percent of the vinifera grapes from San Benito County are grown in this area. The other 5 percent are grown in other areas with different climates, according to the petitioner, who declared, "We are not aware of any other area within San Benito County that could be known as 'San Benito' or that would have comparable climatic and growing conditions." ATF agrees with these assertions, since it appears likely that much of the other 5 percent of the vinifera in San Benito County is planted in the already-established

"Pacheco Pass" viticultural area (located north of Hollister, straddling the border of San Benito and Santa Clara Counties).

Further evidence was offered by the petitioner, concerning its use of the name "San Benito" on wine labels. Since 1959, labels have appeared on wines of the petitioner, made from grapes from the viticultural area, indicating "San Benito" or "San Benito County" as the appellation of origin.

#### Geography of the Area

The petitioner presented evidence that the viticultural area is distinguished geographically from the surrounding areas, as follows:

(a) To the north, the area is distinguished from the Hollister Valley by a relative absence of fog. There are presently few or no grapes grown in the Hollister Valley, but if there were, according to the petitioner, they would be of different character from grapes grown in the "San Benito" area. According to the petitioner, "Even an extra hour of fog daily, which is the situation around Hollister, can create a different characteristic in the wine. The grapes would be slower ripening and would result in higher acid."

(b) Additionally, the viticultural area is distinguished from certain areas to its north and northeast which are burdened, to quote the petitioner, with "a high amount of boron in the water which deforms and destroys the leaves: the vines cannot grow properly and the grapes cannot ripen." This area of boron contamination includes the site of the original "San Benito Vineyard," discussed above.

Boron contamination is a natural feature of the subsoil north of the "San Benito" viticultural area. Groundwater percolating through this subsoil dissolves some of the boron salts. If such groundwater is later drawn up through wells and used for irrigation, boron contamination begins to build up in the topsoil. This apparently is what happened over a period of years in the original "San Benito Vineyard" land. Although famous for grapes for over 50 years, that land today is unsuitable for viticulture.

By contrast, vineyards located inside the new viticultural area are irrigated by water from "deep wells with an extremely low level of boron. There is no toxicity and this condition is monitored on a yearly basis," the petitioner stated.

(c) The eastern, southern, and western boundaries of the area correspond closely to a climatic change as indicated

in *Western Garden Book*, published by Sunset Books.

According to this book, the area inside the viticultural area is an "inland area with some ocean influence" which moderates the climate. By contrast, the surrounding areas to the east, south, and west are designated in the book as areas with more "sharply defined seasons," due to their higher elevations.

(d) Distinctions to the east and west, and to a lesser extent to the south as well, exist on the basis of topography. Those neighboring areas are, for the most part, too steep to be suitable for viticulture. This topographic distinction is apparent from examination of the applicable U.S.G.S. maps.

(e) Finally, the mountain areas to the east and west of the viticultural area would generally be too cold for viticulture, according to a statement made to ATF by the University of California Farm Advisor for San Benito County.

**Boundaries of the Area**

The boundaries of the new viticultural area may be found on six U.S.G.S. maps of the 7.5 minute series, titled Hollister Quadrangle, Tres Pinos Quadrangle, Quien Sabe Valley Quadrangle, Mt. Harlan Quadrangle, Paicines Quadrangle, and Cherry Peak Quadrangle. The boundaries are described in § 9.110, as added to regulations by this Treasury decision. These boundaries are slightly altered from the boundaries that were originally proposed in the petition, so that the San Benito viticultural area, as established by this document, would completely encompass the following approved viticultural areas: "Lime Kiln Valley" (§ 9.27), "Cienega Valley" (§ 9.38), and "Paicines" (§ 9.39). Further, the "San Benito" viticultural area would lie entirely within the approved "Central Coast" area (§ 9.75).

In establishing a viticultural area based on geographical features which affect viticultural features, ATF recognizes that the distinctions between a smaller area and its surroundings are more refined than the differences between a larger area and its surroundings. It is possible for a viticultural area to contain smaller approved viticultural areas, if each area fulfills the requirements for establishment of a viticultural area.

**Miscellaneous**

ATF does not want to give the impression, by approving "San Benito" 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, but not better

than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage can only come from consumer acceptance of "San Benito" wines.

**Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule, because it will not have a significant economic impact on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Further, the final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

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 on a substantial number of small entities.

**Executive Order 12291**

In compliance with Executive Order 12291 of February 17, 1981, the Bureau has determined that this final rule 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 geographical regions; or
- (c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule, because no requirement to collect information is imposed.

**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 procedures, Consumer protection, Viticultural areas, Wine.

**Issuance**

Accordingly, 27 CFR Part 9 is amended as follows:

**PART 9—AMERICAN VITICULTURAL AREAS**

**Paragraph A.** The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

**Par. B.** The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.110, to read as follows:

\* \* \* \* \*

**Subpart C—Approved American Viticultural Areas**

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

**9.110 San Benito.**

\* \* \* \* \*

**Par. C.** Subpart C of 27 CFR Part 9 is amended by adding § 9.110, which reads as follows:

**§ 9.110 San Benito.**

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

(b) *Approved maps.* The appropriate maps for determining the boundaries of San Benito viticultural area are six U.S.G.S. maps. They are titled:

- (1) Hollister Quadrangle, 7.5 minute series, 1955 (photorevised 1971).
- (2) Tres Pinos Quadrangle, 7.5 minute series, 1955 (photorevised 1971).
- (3) Quien Sabe Valley Quadrangle, 7.5 minute series, 1968.
- (4) Mt. Harlan Quadrangle, 7.5 minute series, 1968.
- (5) Paicines Quadrangle, 7.5 minute series, 1968.
- (6) Cherry Peak Quadrangle, 7.5 minute series, 1968.

(c) *Boundary*—(1) *General.* The San Benito viticultural area is located in San Benito County, California. The starting point of the following boundary description is the point where the eastern border of Section 17 of Township 15 South, Range 7 East, crosses the latitude 36°37'30" (on the Cherry Peak map).

(2) *Boundary Description*—(i) From the starting point, westward along latitude 36°37'30" to the Range Line R.6E./R.7E. (on the Paicines map).

(ii) Then northward along that range line to the southern border of Section 1, Township 15 South, Range 6 East.

(iii) Then westward along that southern border to the western border of the same section.

(iv) Then northward along that western border to the 800-foot contour line.

(v) Then northwestward along that contour line to the Township Line T.14S./T.15S.

(vi) Then westward along that township line to the southern border of Section 34, Township 15 South, Range 6 East.

(vii) Then continuing westward along that southern border to the 1200-foot contour line.

(viii) Then generally northwestward along that contour line until it crosses for the second time the southern border of Section 28, Township 14 South, Range 6 East.

(ix) Then westward along that southern border to the 1400-foot contour line.

(x) Then following the 1400-foot contour line through the following sections: Sections 28, 29, and 30, Township 14 South, Range 6 East; Section 25, Township 14 South, Range 5 East; Sections 30, 19, 20, and returning to 19, Township 14 South, Range 6 East; to the point where the 1400-foot contour line intersects the section line between Sections 19 and 18, Township 14 South, Range 6 East.

(xi) From there in a straight line due northward to the 1200-foot contour line in Section 18, Township 14 South, Range 6 East.

(xii) Then following the 1200-foot contour line generally northwestward to the northern border of Section 10, Township 14 South, Range 5 East (on the Mt. Harlan map).

(xiii) Then following that northern border northwestward to the 1600-foot contour line.

(xiv) Then following the 1600-foot contour line generally northward to an unimproved road.

(xv) Then looping southward along the unimproved road and continuing eastward past the designated "Spring" and then northward parallel with Bonanza Gulch to the Vineyard School on Cienega Road (on the Hollister map).

(xvi) From there in a straight line northeastward, crossing Bird Creek and the San Benito River, to the northwestern corner of Section 19, Township 13 South, Range 6 East (on the Tres Pinos map).

(xvii) From there following the northern border of Sections 19 and 20, Township 13 South, Range 6 East, to the northeastern corner of Section 20.

(xviii) From there in a straight line due eastward to the Range line R.6E./R.7E.

(xix) Then southward along that Range line to the Township line T.13S./T.14S.

(xx) Then eastward along that Township line to the eastern border of Section 6, Township 14 South, Range 7 East (on the Quien Sabe Valley map).

(xxi) Then southward along the eastern border of Sections 6, 7, and 18, Township 14 South, Range 7 East, to the northern border of Section 20, Township 14 South, Range 7 East (on the Cherry Peak map).

(xxii) Then eastward along that northern border to the eastern border of Section 20.

(xxiii) Then southward along the eastern border of Sections 20, 29, and 32, Township 14 South, Range 7 East, and continuing southward along the eastern border of Sections 5, 8, and 17, Township 15 South, Range 7 East, to the starting point.

Signed: September 8, 1987.

Stephen E. Higgins,  
Director.

Approved: September 17, 1987.

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

[FR Doc. 87-22939 Filed 10-2-87; 8:45 am]

BILLING CODE 4810-31-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 795 and 799

[OPTS-42043C; FRL-3273-3]

### Testing Requirement; Final Test Standards and Reporting Requirements; 1,2-Dichloropropane

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is issuing a final rule under section 4(a) of the Toxic Substances Control Act (TSCA) that requires manufacturers and processors of 1,2-dichloropropane (DCP; CAS Number 78-87-5) to: (1) Conduct pharmacokinetic (absorption, distribution, metabolism, and excretion) testing with this chemical substance, (2) utilize certain TSCA test guidelines as the test standards for previously and currently required studies for DCP, and (3) submit test data within specified timeframes.

**DATES:** In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ["daylight" or "standard" as appropriate] time on October 19, 1987.

This rule shall become effective on November 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room E-543, 401 M Street SW., Washington, DC 20460, (202-554-1404).

**SUPPLEMENTARY INFORMATION:** This document promulgates a final single-phase test requirement for pharmacokinetic testing of DCP, and a final Phase II rule specifying the test standards and reporting requirements for the testing required in the September 9, 1986 (51 FR 32079) final Phase I test rule.

### I. Background

On September 9, 1986 (51 FR 32079), EPA issued a final Phase I rule under TSCA section 4 that established testing requirements for manufacturers and processors of DCP. This Phase I rule specified the following testing requirements for DCP: (1) Neurotoxicity, (2) mutagenicity (chromosomal aberrations), (3) reproductive effects, (4) developmental toxicity, (5) acute toxicity to marine and freshwater algal and mysid shrimp, and (6) chronic toxicity to mysid shrimp and *Daphnia magna*.

Also on September 9, 1986 (51 FR 32107), EPA proposed applicable TSCA guidelines as test standards. Since TSCA test guidelines were available for all the testing requirements included in the final Phase I rule, they were proposed as the test standards. A 45-day comment period was provided to allow the public, including the manufacturers and processors subject to the Phase I rule, to comment on the use of the TSCA guidelines.

As discussed in the September 9, 1986 proposal, under the two-phase process, persons subject to a final Phase I rule are normally required to submit proposed study plans after the effective date of the Phase I rule. However, because EPA proposed applicable TSCA test guidelines as the test standards for the studies required by the final DCP Phase I rule, persons subject to the rule, i.e., manufacturers and processors of DCP, were exempted from this requirement. Persons subject to the rule, however, were still required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.45. For the DCP Phase I rule, Dow Chemical Company notified EPA of its intent to sponsor all the required testing (Ref. 6). The responsibilities of manufacturers and processors of DCP for testing or requesting exemption from testing responsibilities were discussed in the DCP Phase I final rule (51 FR 32079).

After review of the public comments, EPA is now promulgating a final Phase II rule requiring the manufacturers and processors of DCP to conduct the health and environmental effects studies contained in the final Phase I test rule in