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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

RIN 1512-AA07
[Notice No. 882]

Diamond Mountain Viticultural Area (99R-223P)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing the Diamond Mountain viticultural area. This petition was submitted by Rudy von Strasser of Von Strasser Winery on behalf of the Diamond Mountain Appellation Committee, whose 15 growers and vintners represent 87 percent of the total vineyard holdings in the proposed area. The Diamond Mountain proposed viticultural area is located entirely within the Napa Valley viticultural area. The proposed viticultural area encompasses approximately 5,000 acres, of which approximately 450 acres are planted to vineyards.

DATES: Written comments must be received by November 29, 1999.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221 (Attn: Notice No. 882). Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of Public Affairs and Disclosure, room 6480, 650 Massachusetts Avenue, NW, Washington, DC 20226

FOR FURTHER INFORMATION CONTACT: Thomas B. Busey, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington DC 20226 (202) 927-8199.

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 definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On

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October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, 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) 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 boundaries prominently marked.

Petition

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing a new viticultural area to be called Diamond Mountain. The proposed viticultural area is located entirely in Napa County, California. The proposed area encompasses approximately 5,000 acres, of which approximately 450 acres are planted to vineyards.

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

According to the petitioner, Diamond Mountain has been home to vineyards and wineries since the 1860's. The petitioner presented evidence that a Mr. Joseph Schram planted his first vines as early as 1863 and had a hundred acres of vineyards by 1892.

According to the petitioner, the evolution of Diamond Mountain into a Napa Valley regional name began in the early decades of the 20th century, with Diamond Mountain School and Diamond Mountain Road being the first features in the region to bear the name. The naming of the school took place in 1909, with the major access road in the region designated as Diamond Mountain Road shortly thereafter.

The petitioner has also presented substantial evidence that the Diamond Mountain region began to gain national renown in the early 1970's, as expanding consumer interest in California wines resulted in new vineyards, new wineries and a greater awareness of regional wine character. As evidence for this national name the petitioner includes an excerpt from the second edition of *The Wines of America* by Leon Adams that states, ``Diamond Mountain, like Mt. Veeder and Spring Mountain also on the west side of Napa Valley, is regarded as a viticultural district separate from the rest of Napa Valley.''

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

According to the petitioner, precise boundaries for the region being proposed have never been delineated. The petitioner does, however, state that Diamond Mountain's viticultural history and identity are associated almost exclusively with the Napa Valley, in Napa County. For this reason, the boundaries of the proposed viticultural area are entirely within Napa County. According to the petitioner, the petition takes a conservative approach to establishing boundaries for Diamond Mountain. The petitioner states that special care has been taken to assure that the boundaries encompass only those lands that meet both the historic and geographic criteria for inclusion in the proposed viticultural area. Also, the boundaries have been drawn to respect neighboring regions with separate names, histories, geographic features and political boundaries.

The petitioner cites the Fourth Edition of "The Connoisseurs' Handbook of the Wines of California and the Pacific Northwest" for a description of the proposed area "... a portion of the Napa Valley's western hills between St. Helena and Calistoga". This citation is accompanied by a map which shows the rough limits of the region: Spring Mountain to the south, the 400 foot elevation that generally parallels Highway 29 to the east, Petrified Forest Road to the north and the Napa-Sonoma County line to the west.

The petitioner claims that the 400 foot contour line for the northeastern boundary accurately reflects the lowest elevation of vineyards historically associated with Diamond Mountain. The petitioner also claims that the southwestern boundary acknowledges the historic association of the proposed Diamond Mountain viticultural area with Napa County and Napa Valley, and also recognizes the differences in history and geography that distinguish Diamond Mountain from adjacent slopes of the Mayacama Mountains in Sonoma County.

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

According to the petitioner, the geographical features in the proposed Diamond Mountain viticultural area clearly distinguish it from surrounding areas. The Diamond Mountain region is situated in the Napa Valley on the eastern slope of the Mayacamas Mountains. The region consists entirely of residual upland soils derived from volcanic parent material. According to the petitioner, these soils are very different from the alluvial soils on the floor of the Napa Valley to the east and northeast and are also significantly different from the sedimentary upland soils prevalent in the Spring Mountain viticultural area to the south. The petitioner also emphasizes that these soils are significantly different from the shallow, dry soils in Sonoma County to the west and southwest.

According to the petitioner, the proposed viticultural area's topography and aspect contribute to a special microclimate. Hillside topography and valley temperature inversions combine to give the region an unusually moderate temperate regime during a growing season, with lower maximum temperatures and higher minimum temperatures than nearby locations on the floor of the Napa Valley. The petitioner states that the microclimate of the Diamond Mountain region is clearly distinctive when compared to the surrounding areas. The region's microclimate is slightly warmer than that of the Spring Mountain District to the south, but somewhat similar due to comparable upland locations, northeastern (eastern, in Spring Mountain's case) aspects, and cooling influence of

marine breezes from the Pacific Ocean. The microclimate is significantly cooler than the floor of the Napa Valley to its northeast and north, due to various tempering influences primarily associated with its upland location. So too is it cooler than adjacent land to the west in Sonoma County, due to its predominantly northeastern aspect which provides

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oblique sun and shade in the afternoon, while the western aspect of the Mayacamas Mountains adjacent to the region in Sonoma County is clearly hotter and drier.

Proposed Boundaries

The proposed viticultural area is located in Napa County, California. The approved USGS maps for determining the boundary of the proposed Diamond Mountain viticultural area are, ``Mark West Springs, Calif.'', 7.5 minute series, edition of 1993, and the ``Calistoga, Calif.'', 7.5 minute series, edition of 1993.

The northeastern boundary follows the 400 foot contour line from Ritchey Creek northwest to the Petrified Forest Road and the northern boundary follows the Petrified Forest Road west from the 400 foot contour line to the Napa-Sonoma county line. The southwestern boundary follows the official boundary line between Napa and Sonoma counties southeast from Petrified Forest Road to the east-west boundary between Sections 18 and 19 in Township 8 North, Range 6 West, Mount Diablo Range and Meridian. The southern boundary follows the boundary between Sections 18 and 19, Sections 17 and 20 and Ritchey Creek east from the Napa-Sonoma county line to the 400 foot elevation line. It also corresponds with the Northern Boundary of the Spring Mountain District viticultural area.

Public Participation--Written Comments

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and 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 comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927-8602, provided the comments: (1) Are legible; (2) are 8 1/2" x 11" in size, (3) contain a written signature, and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Drafting Information. The principal author of this document is Thomas B. Busey, Regulations Division, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

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

PART 9--AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding Section 9.166 to read as follows

Subpart C--Approved American Viticultural Areas

* * * * *

Sec. 9.166 Diamond Mountain.

(a) Name. The name of the viticultural area described in this

section is ``Diamond Mountain.``

(b) Approved map. The appropriate maps for determining the boundary of the Diamond Mountain viticultural area are two 1:24,000 Scale U.S.G.S. topography maps. They are titled:

- (1) Mark West Springs, CA 1993
- (2) Calistoga, CA 1993

(c) Boundary. The proposed viticultural area is located in Napa County, California. The beginning point is where the boundary between Napa and Sonoma counties intersects Petrified Forest Road in Section 3 of Township 8 North, Range 7 West, Mount Diablo Base and Meridian on the Mark West Springs map;

(1) Then north and east along Petrified Forest Road approximately 1.9 miles to the point where it intersects the 400 foot contour just east of Section 35 of Township 9 North, Range 7 West, Mount Diablo Base and Meridian, in the Mallacomes land grant;

(2) Then generally east southeast along the 400 foot contour approximately 6.5 miles to the point where it intersects Ritchey Creek in Section 3 of Township 8 North, Range 6 West, Mount Diablo Base and Meridian;

(3) Then west southwest along Ritchey Creek approximately 2.2 miles to the point where it intersects the boundary between Sections 17 and 20 of Township 8 North, Range 6 West, Mount Diablo Base and Meridian;

(4) Then due west in a straight line along the section boundary approximately 0.8 miles to the point where it intersects the boundary between Napa and Sonoma Counties between Sections 18 and 19 of Township 8 North, Range 6 West, Mount Diablo Base and Meridian;

(5) Then generally northwest along the boundary between Napa and

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Sonoma Counties approximately 4.2 miles to the point where it intersects Petrified Forest Road, to the point of beginning.

Signed: September 21, 1999.

John W. Magaw,
Director.

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