

decision was not available to the petitioners at the time they prepared their petition and comments on the advance notice of proposed rulemaking, FDA has also decided that the petition should be denied without prejudice. Interested persons are thus free to gather the requisite data on frozen concentrated orange juice and orange juice from concentrate and to determine for themselves whether those data, evaluated in light of the principles discussed in this document, would support a change in the °Brix in §§ 146.145 and 146.146. If any person decides that the data do support such a change, that person is free to petition the agency to amend the standards.

FDA notes that on December 1, 1981, the State of Florida lowered its minimum soluble solids requirement for frozen concentrated orange juice to 11.8 percent, thereby eliminating any interstate differential °Brix requirements.

Should the petitioners or any other person decide to urge FDA to adopt a °Brix level other than 11.8 for frozen concentrated orange juice and orange juice from concentrate, the petition must include adequate data to enable FDA to calculate a weighted average °Brix value from the average values, according to origin, of the various juices used to make frozen concentrated orange juice and orange juice from concentrate. The petitioners and other interested persons need not resubmit any data that they have already submitted to FDA. Such data may be incorporated by reference in any new petition or other submission, so long as the data so incorporated are clearly identified.

#### List of Subjects in 21 CFR Part 146

Canned fruit juice, Food standards, Fruit juices.

Therefore, for the foregoing reasons, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), the citizen's petition to amend the standard for frozen concentrated orange juice is hereby denied without prejudice, and the proceeding announced in the Federal Register of January 8, 1982 (47 FR 963) is terminated.

Dated: August 5, 1983.

Author Hull Hayes, Jr.,  
Commissioner of Food and Drugs.

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## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Part 9

[Notice No. 481]

#### Howell Mountain 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 Napa County, California, to be known as "Howell Mountain." This proposal is the result of a petition submitted by members of the grape-growing and wine-producing industries. ATF feels that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase.

**DATE:** Written comments must be received by October 3, 1983.

**ADDRESS:** Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 481).

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, Room 4407, Federal Building, 12th and Pennsylvania Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** James P. Ficaretta, 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. 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 of the appropriate U.S.G.S. map with the boundaries prominently marked.

#### Petition

ATF has received a petition proposing an area in Napa County, California, as a viticultural area to be known as "Howell Mountain." The proposed area consists of approximately 14,080 acres, with 198 acres of grapes and 2 bonded wineries. It is a relatively flat table top located west of Pope Valley within the Napa Valley viticultural area.

Historical and current evidence regarding the name as well as the boundaries of the proposed area include:

(a) Copies of recent (1980 Ridge Vineyards, Inc., and 1978 Cakebread Cellars), and past wine labels (La Jota Vineyard, prior to 1900), each of which indicates the appellation Howell Mountain.

(b) The presence of "Howell Mountain Road" that runs through the proposed viticultural area.

(c) The establishment of a winery on Howell Mountain in the early 1880's by Jean Brun and Jean Chaix.

Geographical features of the proposed Howell Mountain viticultural area include the following:

(a) The proposed area is located at an elevation of between 1,400 and 2,200 feet.

(b) The soils in the proposed area are for the most part in the Aiken and Forward Group. These soil types are not commonly found in the vineyards of the Napa Valley floor.

(c) The climate on Howell Mountain is characterized by moderate temperatures, with an average mean temperature of 56.8° F., compared to an average mean temperature of 58.6° F. at St. Helena (to the southwest) and 59° F. in Pope Valley (to the northeast).

(d) The average yearly rainfall for Howell Mountain is 40.74", compared to 32.1" for Pope Valley and 35.4" for Napa Valley (St. Helena).

(e) Several days of the year the valley floor is covered with fog while Howell Mountain is at the same time exposed to sunlight.

The boundaries of the proposed Howell Mountain viticultural area may be found on four U.S.G.S. maps (Aetna Springs, St. Helena, Calistoga, and Detert Reservoir).

The boundaries, as proposed by the petitioner, are described in proposed § 9.94

#### Regulatory Flexibility Act

The provisions on the Regulatory Flexibility Act relating to initial and final regulatory flexibility analyses (5 U.S.C. 603, 604) are not applicable to this notice of proposed rulemaking because the proposal is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities; nor (2) to impose, not 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 the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact nor compliance burden on a substantial number of small entities.

#### Compliance With Executive Order 12291

It has been determined that this notice of proposed rulemaking 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. Ch. 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

#### Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. This document proposes possible boundaries for the Howell Mountain viticultural area. However, 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 in 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 interested 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 Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

#### List of Subjects in 27 CFR Part 9

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

#### Drafting Information

The principal author of this document is James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

#### 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 § 9.94 to read as follows:

### Subpart C—Approved American Viticultural Areas

Sec.

\* \* \* \* \*  
9.94 Howell Mountain.

**Paragraph 2.** Subpart C is amended by adding § 9.94 to read as follows:

### Subpart C—Approved American Viticultural Areas

\* \* \* \* \*  
**§ 9.94 Howell Mountain.**

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

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Howell Mountain viticultural area are four U.S.G.S. topographic maps in the 7.5 minute series, as follows:

- (1) "Detert Reservoir, CA.," 1958 (photorevised 1980).
- (2) "Aetna Springs, CA.," 1958 (photorevised 1981).
- (3) "Calistoga, CA.," 1958 (photorevised 1980).
- (4) "St. Helena, CA.," 1960 (photorevised 1980).

(c) *Boundaries.* The proposed Howell Mountain viticultural area is located in Napa County, California, and is part of the Napa Valley viticultural area. The exact boundaries of the proposed area, based on landmarks and points of reference found in the approved maps, are as follows: Commencing at the 1,400' contour line at the intersection of Sections 15 and 16 in R6W/T9N of the Detert Reservoir Quadrangel U.S.G.S. map; Then, continue in an east and southeast direction along the 1,400' contour line to the southeast corner of Section 23 in R5W/T8N; Then, in a generally northwest direction along the 1,400' contour line until it intersects the line between Sections 21 and 22 in R6W/T9N; Then, north along the Section 21/22 boundary line to the starting point at the 1,400' contour line.

Approved: August 12, 1983.

Stephen E. Higgins,

Director.

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