

Signed: March 15, 2004.

Arthur J. Libertucci,
Administrator.

Approved: April 27, 2004.

Timothy E. Skud,
*Deputy Assistant Secretary (Tax, Trade, and
Tariff Policy).*

[FR Doc. 04-14651 Filed 6-28-04; 8:45 am]

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[T.D. TTB-14; Re: Notice No. 8]

RIN 1513-AA28

San Bernabe and San Lucas Viticulural Areas (2001R-170P)

AGENCY: Alcohol and Tobacco Tax and
Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the San Bernabe viticultural area and realigns the existing San Lucas viticultural area. Both viticultural areas are within the Monterey viticultural area in Monterey County, California, and within California's multi-county Central Coast viticultural area. The establishment of viticultural areas allows vintners to describe more accurately where their wines come from and enables consumers to better identify the wines they purchase.

EFFECTIVE DATE: August 30, 2004.

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, Program Manager, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 6660 Delmonico Dr., #D422, Colorado Springs, CO 80919; telephone 415-271-1254.

SUPPLEMENTARY INFORMATION:

Background on Viticulural Areas

TTB Authority

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity, while prohibiting the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out the Act's provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Regulations in 27 CFR Part 4, Labeling and Advertising of Wine, allow the

establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Title 27 CFR Part 9, American Viticultural Areas, contains the list of approved viticultural areas.

Definition

Title 27 CFR 4.25(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features whose boundary has been delineated in subpart C of part 9. The establishment of viticultural areas allows the identification of regions where a given quality, reputation, or other characteristics of the wine is essentially attributable to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify the wines they purchase. Establishment of a viticultural area is neither an approval nor endorsement by TTB of the wine produced there.

Requirements

Section 4.25(e)(2) outlines the procedure for proposing an American viticultural area. Anyone interested may petition TTB to establish a grape-growing region as a viticultural area. The petition must include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that the boundaries of the proposed viticultural area are as specified in the petition;
- Evidence relating to the geographical features, such as climate, soils, elevation, physical features, etc., that distinguish the proposed area from surrounding areas;
- A description of the proposed viticultural area's specific boundaries, based on features found on maps approved by the United States Geological Survey (USGS); and
- A copy of the appropriate USGS map(s) with the boundaries prominently marked.

A petition requesting the modification of an established viticultural area must include the appropriate evidence and maps as described above to support the requested modification(s).

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that suggests an origin other than the wine's true place of origin. With certain exceptions, the regulations also prohibit

the use of brand names of viticultural significance, such as the name of a State, county, or viticultural area, unless the wine meets the appellation of origin requirements for the named geographic area.

With the establishment of the "San Bernabe" viticultural area, its name, like that of the existing "San Lucas" viticultural area, becomes a term of viticultural significance. Wine bottlers using "San Bernabe" or "San Lucas" in a brand name, including a trademark, or in another label reference, must ensure the product is eligible to use that viticultural area's name as an appellation of origin.

For a wine to be eligible to use a viticultural area name listed in part 9 of the TTB regulations as an appellation of origin, at least 85 percent of the grapes used to make the wine must have been grown within that viticultural area. If the wine is not eligible to use the viticultural area name and that name appears in the wine's brand name or in another label reference, the label is not in compliance and the bottler must change the brand name or other label reference and obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i) for details.

San Bernabe and San Lucas Petitions

We received two petitions from Claude Hoover of Delicato Family Vineyards, Monterey, California, proposing the establishment of a new viticultural area to be named San Bernabe, and the realignment of the adjacent, established San Lucas viticultural area (27 CFR 9.56). Both viticultural areas are located in the Salinas Valley in central Monterey County, California. The two areas are within the Monterey viticultural area (27 CFR 9.98) and the multi-county Central Coast viticultural area (27 CFR 9.75).

The San Bernabe viticultural area encompasses 24,796 acres of predominantly rolling hills with sandy soils and 7,636 acres of vineyards. The realignment of the San Lucas viticultural area transfers 1,281 acres of rolling, sandy land from the northwestern San Lucas area to the southern San Bernabe area. This realignment avoids splitting a large vineyard between the two viticultural areas, prevents overlapping boundary lines between the two viticultural areas, and creates one common boundary line between the San Bernabe viticultural area and the San Lucas viticultural area.

Name Evidence

According to the 1991 publication of "Monterey County Place Names, A Geographical Dictionary," by Donald Thomas Clark, Father Pedro Font, a member of the California expedition of Spanish explorer DeAnza, documented the initial reference to San Bernabe on March 8, 1776. He wrote in his diary, "we had passed a spur of the Sierra de Santa Lucia * * *. The road at first runs through a spur of mountains, until it descends to a wide valley called the Cañada de San Bernabe." Eventually the area became known as "Rancho San Bernabe."

The Thompson Canyon and San Lucas USGS quadrangle maps prominently identify the area as San Bernabe. The relevant Thomas Guide labels this area Rancho San Bernabe. The TopoZone map Web site identifies this rural area as San Bernabe.

The 13,000-acre San Bernabe vineyard estate, owned by Delicato Family Vineyards, has 7,636 acres planted to grapes and sits almost entirely within the new viticultural area. A small portion of the vineyard estate, outside the San Bernabe viticultural area boundaries, is unplanted and unsuitable for grape cultivation. According to the Delicato Family Vineyards petition, the San Bernabe vineyard estate is recognized as the largest continuous vineyard estate under a single ownership in the free world.

Boundary Evidence

According to the 1991 "Monterey County Place Names, A Geographical Dictionary," the San Bernabe area land grants were given to Jesus Molina in 1841 and in 1842 to Petronillo Rios. In 1842 Rios bought the Molina land grant and the Rios family began raising cattle and crops on this land and producing wine from their own grapes. The Rios ranch, known as Rancho San Bernabe, eventually became a successful vineyard and wine producing property.

In the 1970s Prudential-Southdown purchased the San Bernabe acreage for vineyard development. In 1988 the Delicato family bought the San Bernabe vineyard for its premium and super-premium wine market potential. The San Bernabe vineyard estate occupies 52 percent of the viticultural area of the same name.

The San Bernabe viticultural area boundary line connects benchmarks, mountain peaks, and other U.S.G.S. map geographical features by using straight lines and several roads that follow the hilly terrain and soil changes.

The San Bernabe viticultural area shares portions of its west and

southwest boundary lines with the surrounding Monterey viticultural area, which is, in turn, surrounded by the multi-county Central Coast viticultural area. The San Bernabe viticultural area shares its south boundary line with the realigned San Lucas viticultural area's northwestern boundary. The transfer of 1,281 acres of the San Lucas viticultural area to the San Bernabe viticultural area helps to better define the geographical differences between the established San Lucas area and the new San Bernabe area while preventing the split of an existing vineyard between the two viticultural areas.

Growing Conditions

Topography

The San Bernabe viticultural area is located immediately south of King City in the long Salinas Valley. The approximately 9-mile-long and 7-mile-wide viticultural area occupies the valley floor and rolling foothills, extending west from the Salinas River to the Santa Lucia Mountains. Unique viticultural qualities of the San Bernabe area include its climate, water quality, wind-produced eolian soils, and rolling hills. The 1,281 acres realigned from the San Lucas viticultural area possess similar eolian soils, rolling hills topography, and irrigation water quality as found in the new San Bernabe viticultural area.

Soils

In the San Bernabe viticultural area, grapes are grown below the 700-foot elevation level on rolling hills in wind-produced eolian soils. The Oceano, Garey, and Garey-Oceano complex eolian soil types, which are well to excessively well-drained, dominate the San Bernabe viticultural area. Small niches of alluvial soils, derived from the shale-based Santa Lucia Mountains, lie within the area and immediately to the north and south of the San Bernabe boundary lines.

The larger, surrounding Monterey viticultural area consists of only 1.6 percent eolian soils, and the alluvial Lockwood series soils dominate the adjacent San Lucas viticultural area. The realignment area possesses a predominance of the wind-produced eolian soils that contrast to the alluvial type soils of the San Lucas area. Above and west of the 700-foot contour line, the soils are derived from the shale-based Santa Lucia Mountains. The bench soils along the east boundary are common to the Salinas River area. East of the San Bernabe viticultural area boundary line, the Gabilan Mountain Range includes calcareous sandstone,

shale, and siltstone, which come from a different source material, according to the petitioner.

Climate

The Salinas Valley forms a broad funnel for the strong, cool, afternoon marine winds coming off Monterey Bay during the warm months. The winds are drawn inland and south through the Salinas Valley by rising warm air that moderates the valley's high and low temperatures to varying degrees, producing a graduated effect in the valley. As a result, the San Bernabe area is warmer than viticultural areas to the north, and closer to Monterey Bay, and cooler than the adjoining San Lucas viticultural area to the immediate south.

The winds dissipate gradually as they travel inland from Monterey Bay and create a series of temperature-unique, grape-growing areas within the long Salinas Valley. San Bernabe, at 60 miles south of the Monterey Bay, averages a 30-degree daily temperature variation, while Salinas, at 17 miles from the Monterey Bay, averages a smaller 18-degree daily temperature variation.

The cool night air helps retain the grapes' acid and color, while the daily heat encourages ripeness and flavor. The San Bernabe area averages 30 frost-days annually, while Salinas, closer to Monterey Bay, averages only four frost-days.

More rain falls at the Salinas Valley's extreme north and south ends, with less falling in the region between, which includes the San Bernabe viticultural area. At the valley's north end, the city of Salinas averages 17.5 inches of annual rainfall, and, at the valley's south end, Paso Robles averages 19 inches. The San Bernabe area, between the two ends, averages only 13 inches of annual rainfall.

Water Resources

Irrigation water is used extensively in the San Bernabe viticultural area's vineyards. The water comes from area reservoirs and contains only small amounts of carbonates and nitrates, which benefits the grapevines and soil. Toward the Monterey Bay, water quality declines as nitrate and carbonate levels increase.

Notice of Proposed Rulemaking

Comments

TTB published a notice of proposed rulemaking regarding the establishment of the San Bernabe viticultural area and the realignment of the San Lucas viticultural area in the May 14, 2003, **Federal Register** as Notice No. 8 (68 FR 25851). In that notice, TTB requested

comments by July 14, 2003, from all interested persons. No comments were received in response to this Notice No. 8.

TTB Finding

TTB finds that the evidence submitted with the petition supports the establishment of the proposed San Bernabe viticultural area and the realignment of the existing San Lucas viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the San Bernabe viticultural area and realign the San Lucas viticultural area as described in this final rule, effective 60-days from this document's publication.

Regulatory Analyses and Notices

Regulatory Flexibility Act

We certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

The principal author of this document is N.A. Sutton (Colorado) Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

■ For the reasons discussed in the preamble, we amend 27 CFR, chapter 1, part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Amend § 9.56 to revise paragraphs (c)(24) and (c)(25) and add paragraphs (c)(26) and (c)(27) to read as follows:

§ 9.56 San Lucas.

* * * * *

(c) *Boundary.* * * * * *

* * * * *

(24) Then northeasterly approximately 1.3 miles to the 595-foot promontory, section 13, T21S, R8E (Espinosa Canyon Quadrangle);

(25) Then northeasterly approximately 0.6 mile to the intersection of a meandering, unnamed, light duty road and the fork of an intermittent stream, then continue meandering northeasterly, followed by southeasterly, approximately 1.1 miles to its intersection with an unnamed, light duty road south of the windmill, T21, R8E (Espinosa Canyon Quadrangle);

(26) Then northeasterly along the unnamed road approximately 0.6 mile to its intersection with the Salinas River, then continue 0.8 mile north in a straight line to benchmark 340, between U.S. Highway 101 and the Salinas River, in T21S, R9E (San Lucas Quadrangle);

(27) Then approximately 0.4 mile northwesterly in a straight line to the intersection with a water tank, then continues northeasterly in a straight line approximately 0.7 mile, and return to the point of beginning in the northwest corner of section 5, in T21S, R9E (San Lucas Quadrangle).

■ 3. Subpart C is amended by adding § 9.171 to read as follows:

§ 9.171 San Bernabe.

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

(b) *Approved Maps.* The appropriate maps for determining the boundary of the San Bernabe viticultural area are four 1:24,000 scale, USGS topographic maps. They are titled:

(1) Thompson Canyon Quadrangle, California-Monterey County, 1949 (photorevised 1984);

(2) San Lucas Quadrangle, California-Monterey County, 1949 (photorevised 1984);

(3) Espinosa Canyon Quadrangle, California-Monterey County, 1949 (photorevised 1979); and

(4) Cosio Knob Quadrangle, California-Monterey County, 1949 (photorevised 1984);

(c) *Boundary.* The San Bernabe viticultural area is located in central Monterey County, south of King City, California, and west of U.S. Highway 101.

(1) The point of beginning on the Thompson Canyon Quadrangle is benchmark 304, located one-half mile southwest of King City, along the

Salinas River, in Township 20 South (T20S) and Range 8 East (R8E). Proceed southeast in a straight line for 2.35 miles to benchmark 304, at the intersection of a trail and the 300-foot contour line, between U.S. Highway 101 and the Salinas River, in T20S and R8E (San Lucas Quadrangle); then

(2) Proceed southeast in a straight line for 2.9 miles to benchmark 336, between U.S. Highway 101 and the Salinas River, in T20S and R8E (San Lucas Quadrangle); then

(3) Proceed southeast in a straight line for 3 miles to benchmark 340, between U.S. Highway 101 and the Salinas River, in T21S and R9E (San Lucas Quadrangle); then

(4) Proceed south in a straight line for 0.8 mile to the intersection of the Salinas River and the Highway 198 bridge, in T21S and R9E (Espinosa Canyon Quadrangle); then

(5) Proceed southwest along Highway 198 for 0.6 mile to its intersection with an unnamed light duty road, in T21S and R9E (Espinosa Canyon Quadrangle); then

(6) Proceed northwest, followed by southwest, about 1.2 miles along the meandering, unnamed, light duty road to its intersection with the fork of an intermittent stream, in T21S and R8E (Espinosa Canyon Quadrangle); then

(7) Proceed southwest in a straight line for 0.6 mile to the 595-foot peak, Section 13, in T21S and R8E (Espinosa Canyon Quadrangle); then

(8) Proceed southwest in a straight line for 1.3 miles to the 788-foot peak, section 23, in T21S and R8E (Espinosa Canyon Quadrangle); then

(9) Proceed southwest in a straight line for 0.7 mile to the intersection of the unimproved road and jeep trail, east of the 73-degree longitudinal line, section 26, in T21S and R8E (Espinosa Canyon Quadrangle); then

(10) Proceed northwest in a straight line for 3.2 miles to the northwest corner of section 16, in T21S and R8E (Espinosa Canyon Quadrangle); then

(11) Proceed southwest in a straight line for 1.5 miles to the northeast corner of section 19, in T21S and R8E (Cosio Knob Quadrangle); then

(12) Proceed southwest in a straight line for 2.2 miles to the southwest corner of section 24, in T21S and R7E (Cosio Knob Quadrangle); then

(13) Proceed north in a straight line for 2 miles to the northwest corner of section 13, in T21S and R7E (Cosio Knob Quadrangle); then

(14) Proceed east in a straight line for 1 mile to the northeast corner of section 13, in T21S and R7E (Cosio Knob Quadrangle); then

(15) Proceed north in a straight line for 2 miles, along the R7E and R8E common boundary line, to the northwest corner of section 6, in T21S and R8E (Thompson Canyon Quadrangle); then

(16) Proceed east in a straight line for 0.1 mile to the southwest corner of section 31 and continue diagonally to the northeast corner of section 31, in T20S and R8E (Thompson Canyon Quadrangle); then

(17) Proceed west in a straight line for 2 miles to the southwest corner of section 25, in T20S and R7E (Thompson Canyon Quadrangle); then

(18) Proceed due north in a straight line for 0.1 mile to the intersection with a light duty road, named Pine Canyon Road, in section 25, and continue northeast along that road for 3.2 miles to its intersection with an unnamed secondary highway, north of benchmark 337, section 18, in T20S and R8E (Thompson Canyon Quadrangle); then

(19) Proceed northwest along the unnamed secondary highway for 0.3 mile to its intersection with U.S. Highway 101, in T20S and R8E (Thompson Canyon Quadrangle); then

(20) Proceed northeast along U.S. Highway 101 for 0.7 mile to benchmark 304, returning to the point of beginning (Thompson Canyon Quadrangle).

Signed: April 26, 2004.

Arthur J. Libertucci,
Administrator.

Approved: May 26, 2004.

Timothy E. Skud,
Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Definitions for Surface and Underground Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; Technical amendment.

SUMMARY: This technical amendment moves several definitions from subparts B, C, E, H, M, and R of 30 CFR part 56, and from subparts B, C, E, H, M and T of 30 CFR part 57 to the general definitions section in subpart A of 30 CFR parts 56 and 57 respectively. This action eliminates redundancy and

potential confusion with multiple definitions. It provides the metal and nonmetal mining community a central location in the CFR where most definitions applicable to surface or underground metal and nonmetal mines can be found. Definitions that have a specific application to a particular subpart have not been moved to subpart A.

DATES: *Effective Date:* June 29, 2004.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations and Variances, MSHA; 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939; telephone (202) 693-9440; facsimile (202) 693-9441; or e-mail: nichols.marvin@DOL.gov. This notice is available on the Internet at <http://www.msha.gov/REGSINFOR.HTM>.

SUPPLEMENTARY INFORMATION:

I. Discussion of Changes

This technical amendment moves several definitions from subparts B, C, E, H, M and R of 30 CFR part 56; and subparts B, C, E, H, M and T of 30 CFR part 57 to the general definition section of subpart A of 30 CFR parts 56 and 57. This action eliminates redundancy and potential confusion with multiple definitions. It provides the metal and nonmetal mining community a central location in the CFR where most definitions applicable to surface or underground metal and nonmetal mines can be found. Definitions that have a specific application to a particular subpart have not been moved to subpart A.

II. Procedural Matters

Administrative Procedures Act

The minor revisions contained in this notice are technical and nonsubstantive in nature. Accordingly, pursuant to 5 U.S.C. 553(b)(B) of the Administrative Procedures Act (APA), it has been determined that the notice and comment procedures do not apply to this action. For the same reason, it has been determined that in accordance with 5 U.S.C. 553(d), there is good cause to make these changes effective on the date of publication in the **Federal Register**.

III. Part 56

To eliminate potential confusion and redundancy with the definitions, the definition for *Explosive* found in § 56.2 and § 56.6000, has been combined and moved to § 56.2, the general definitions section for 30 CFR part 56. The definitions for *berm* and *mobile equipment* have been moved to § 56.2.

Accordingly, § 56.9000 has now been deleted since *berm* and *mobile equipment* were the only definitions in that section.

IV. Part 57

To eliminate potential confusion and redundancy with the definitions, the definitions for *Auxiliary fan* found in § 57.2 and § 57.22002, *Booster fan* found in § 57.2 and § 57.22002, *Combustible material* found in § 57.4000 and § 57.22002, *Mobile equipment* found in § 57.9000 and § 57.14000, and *Noncombustible material* found in § 57.4000 and § 57.22002, have been combined and moved to § 57.2, the general definitions section to 30 CFR part 57. The definitions for *berm* and *mobile equipment* have been moved to § 57.2. Accordingly, § 57.9000 has now been deleted since *berm* and *mobile equipment* were the only two definitions in that section.

List of Subjects in 30 CFR Parts 56 and 57

Explosives, Ground control, Fire prevention, Loading, hauling, dumping, Machinery and equipment, Metal and nonmetal, Mine safety and health, Personnel hoisting.

Dated: June 23, 2004.

David Dye,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

■ For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, MSHA is amending chapter I, parts 56 and 57 of title 30 of the Code of Federal Regulations as follows:

PART 56—[AMENDED]

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 2. Section 56.2 is revised to read as follows:

§ 56.2 Definitions.

The following definitions apply in this part. In addition definitions contained in any subpart of part 56 apply in that subpart. If inconsistent with the general definitions in this section, the definition in the subpart will apply in that subpart:

American Table of Distances means the current edition of "The American Table of Distances for Storage of Explosives" published by the Institute of Makers of Explosives.

Approved means tested and accepted for a specific purpose by a nationally recognized agency.