

from the NDB to 8.3 miles northwest of the NDB.

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**Maureen Woods,**

*Manager, Air Traffic Division.*

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## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Part 9

[Notice No. 854]

RIN: 1512-AA07

#### **Proposals To Establish a Yorkville Highlands Viticultural Area and Realign the Southern Boundary of the Mendocino Viticultural Area (95F-020P)**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area located in Mendocino County, California, to be known as "Yorkville Highlands," and the extension of the southern boundary of the Mendocino Viticultural Area to coincide with the boundary of the proposed area. These proposals are the result of a petition filed by Mr. William J.A. Weir for the Yorkville Highlands Appellation Committee and a related petition filed by Ms. Bernadette A. Byrne, Executive Director of the Mendocino Winegrowers Alliance.

ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allow wineries to designate the specific areas where the grapes used to make the wine were grown and enable consumers to better identify the wines they purchase.

**DATES:** Written comments must be received by September 23, 1997.

**ADDRESSES:** Send written comments to: Chief, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221, *Attn: Notice No. 854.* Copies of written

comments received in response to this notice of proposed rulemaking will be available for public inspection during normal business hours at: ATF

Reference Library, Office of Public Affairs and Disclosure, Room 6300, 650 Massachusetts Avenue, NW, Washington, DC 20226.

#### **FOR FURTHER INFORMATION CONTACT:**

Marjorie D. Ruhf, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-8230).

#### **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 American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

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. 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 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.

##### **Petitions**

ATF has received a petition from Mr. William J. A. Weir of Weir Vineyards for the Yorkville Highlands Appellation Committee ("Yorkville Highlands

petition"). The petition was signed by Mr. Larry W. Martz of Martz Vineyards, Inc., Mr. Frank Souzao of Souzao Cellars, Mr. Michael J. Page, of Mountain House Vineyard, Mr. Robert A. Vidmar of Vidmar Vineyard, and Mr. Edward D. Wallo, of Yorkville Vineyards. The petitioners represent both wineries and growers within the proposed area. The petitioners note the area includes historic vineyards dating from 1914 as well as newly established vineyards.

ATF has also received a related petition from Ms. Bernadette A. Byrne, Executive Director of the Mendocino Winegrowers Alliance ("Mendocino petition"), requesting that the southern boundary of the existing Mendocino Viticultural Area be extended to coincide with the requested southern boundary in the Yorkville Highlands petition. The Mendocino Viticultural Area was established pursuant to T.D. ATF-178 on June 15, 1984 (49 FR 24711). The recent Mendocino petition incorporated the Yorkville Highlands petition by reference and stated that the proposed Yorkville Highlands southern boundary is appropriate for the Mendocino viticultural area as well.

These two proposals, if adopted, would result in the Yorkville Highlands area being entirely within the Mendocino area. Both areas would be entirely within Mendocino County, California, as is the existing Mendocino viticultural area.

The proposed new area consists of approximately 40,000 acres, of which approximately 70 are devoted to viticulture. There are seven growers and two wine producers within the proposed Yorkville Highlands area now, with two new growers planning vineyards and some existing growers planning to plant more vineyards. The proposed expansion of the Mendocino viticultural area would add approximately 10,000 acres to that area.

##### **Evidence of Name**

The Yorkville Highlands petitioners supplied the following evidence that the name of the proposed new area is locally and/or nationally known as referring to the area specified in the petition:

(a) A brochure published by the Mendocino Winegrowers Alliance entitled "Mendocino. Real Farmers, Real Wine. On California's Redwood Coast" which lists "Yorkville Highlands" among the County's wine growing areas. In the brochure, the area is described as extending northwest from the Mendocino-Sonoma County border along Route 128, a description

which fits the area proposed for designation.

(b) A map of "Mendocino Wine Country" published in "Steppin' Out, California's Wine Country Magazine," volume XIII, issue 27, which includes the "Yorkville Highlands" area. Again, the area outlined on the map coincides with the boundaries requested by the petitioner.

#### **Evidence of Boundaries**

The Yorkville Highlands petitioners have defined the proposed area primarily by reference to the Sonoma-Mendocino county line and by straight lines drawn between benchmarks, mountain peaks, and other features found on the U.S.G.S. maps.

The proposed new area is within the North Coast viticultural area. If the Mendocino viticultural area is expanded as proposed, then the new area will be entirely within the Mendocino area as well. The proposed Yorkville Highlands area is bounded on the northwest by the Anderson Valley viticultural area, and surrounded by other viticultural areas less than five miles away. McDowell Valley lies to the northeast, Alexander Valley and Northern Sonoma lie to the southeast and south, and there is a new viticultural area under consideration to the southeast.

#### **Geographical Features**

According to the petitioners, the proposed new area, including the area under consideration for addition to the existing Mendocino viticultural area, share characteristics of topography, soil composition and climate which distinguish the proposed viticultural area from the surrounding areas. For an overview of the geographical features which set the area apart, the petitioners submitted letters from Mr. Mark Welch, President of the Mendocino County Farm Bureau, Mr. Glenn McGourty, Viticultural Farm Advisor & County Director, University of California Cooperative Extension, and Mr. Steve Williams, of A.V.V.S.

Mr. Welch stated that he believes the boundaries submitted reflect a unique and outstanding grape growing locale. He went on to say:

The soils of the area are different from adjacent, recognized districts like the Anderson Valley, and the distinct micro climate offers warmer days, cool afternoon breezes and a substantial growing season for a low to mid region II.

Similarly, Mr. McGourty stated that the soils and climate of the proposed viticultural area are "significantly different from surrounding grape growing areas, being high elevation and in an area where the coastal Douglas Fir

forests meet the oak woodland forests more typical of interior Mendocino County."

Mr. Williams stated he has been building and managing vineyards in the proposed "Yorkville Highlands" viticultural area for more than ten years. He notes that the proposed new area is different viticulturally from both the Anderson Valley viticultural area and the Hopland area of the Mendocino viticultural area. He gave the following details:

The climate of the \* \* \* area has days warmer than Anderson Valley but cooler than Hopland. The nights are cooler than both Anderson Valley and Hopland. This means many grape varieties can be grown in this area but will have a long ripening period which will greatly enhance fruit flavors and quality.

In regards to soil the area also differs from [Anderson Valley] or Hopland. The \* \* \* soils are thinner than [sic] Hopland but more fertile and varied than [Anderson Valley].

The petitioners provided the following evidence to support their claims:

#### **Topography**

According to the petitioners, the proposed "Yorkville Highlands" viticultural area lies generally along the headwaters of Dry Creek and Rancheria Creek. The petitioners state that the vineyards in the proposed "Yorkville Highlands" viticultural area are almost entirely above 800 feet in elevation. The petitioners describe the area as "a continuous string of high benches and land troughs bordered by even higher ridges with Highway 128 running down the middle." The U.S.G.S. topographic maps submitted by the petitioners show the proposed area is a valley, with Highway 128 and the Rancheria and Dry Creeks running along the northwest-southeast axis of the area. This center line of the area is the lowest part, at approximately 800 feet, and the highest, in the area near the northern boundary, is over 3,000 feet.

#### **Soil**

The petitioners state that the soils in the proposed new viticultural area are rocky hill soils characterized by gravel and old brittle rock. According to the petitioners, these generally thin soils found on the high benches and land troughs of the proposed area stand in stark contrast to the generally very loamy clay soils found in the valleys and bottom lands dominating the neighboring approved viticultural areas. Soil types mapped by the U.S. Soil Conservation Service include: Bearwallow, Hellman, Cole Loam, Henneke, Montara, Hopland Loam,

Squawrock, Witherell, Yorkville and Boontling. The petitioners note only one or two of these soil types are found in common with a neighboring viticultural area.

#### **Climate**

The petitioners state the climate in the proposed Yorkville Highlands viticultural area is influenced by marine air well over 50 percent of the time. The petition states:

Almost every morning during the growing season, the moist marine fog is found on the high bench lands and land troughs which comprise the proposed viticulture area and connect the cooler Anderson Valley with the much warmer Alexander Valley. The trees on these bench lands are draped with the moss from this ocean air invasion and cooler climatic condition.

Unofficial heat summation data collected at the Weir Vineyards within the proposed area reflects a four year average of 3,060, compared to approximately 2,500 in Boonville and Philo to the northwest of the proposed area and 3,650 reported by the University of California Agricultural Extension Service in Cloverdale, to the southeast.

Average annual rainfall within the proposed area from 1961 through 1990, as measured by the Department of Water Resources, Eureka Flood Center at the Yorkville Station, was 50.55 inches. The Anderson Valley, to the northwest, receives an average of only 40.7 inches of rain per year.

#### **Revised Mendocino Boundary**

Concurrent with consideration of the Yorkville Highlands petition, ATF is considering a revision of the southern boundary of the Mendocino viticultural area. The existing southern boundary of Mendocino runs through the middle of the proposed area. A large triangular portion of the proposed area is outside of the Mendocino area while the other portion of the proposed area is within the Mendocino area. This revision has been proposed by both the Mendocino Winegrowers Alliance and the Yorkville Highlands petitioners.

In support of the boundary revision, the petitioners note that the bisection of the proposed Yorkville Highlands area by Mendocino leaves similar growing areas and conditions within a few miles to a few feet of each other on the opposite side of the Mendocino Boundary. Mr. Bruce E. Bearden, Farm Advisor, Emeritus, University of California Cooperative Exchange, stated that the existing boundary arbitrarily excludes some of the regions naturally associated with existing vineyards. Mr. Bearden further states that the revised

boundary would reunite the related soils and climates of the area.

### Proposed Boundary

The proposed revision to the boundary of the Mendocino viticultural area is described in § 9.93. In addition, there is a typographical error in 27 CFR § 9.93(c)(11), which we propose to correct as part of this rulemaking.

The boundary of the proposed Yorkville Highlands viticultural area may be found on six United States Geological Survey (U.S.G.S.) maps with a scale of 1:24000. The boundary is described in § 9.157.

### Executive Order 12866

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

### Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. 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 a particular area. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

### Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) and its implementing regulations, 5 CFR Part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

### Public Participation

ATF requests comments from all interested parties. 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, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a 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. During the comment period, any person may request an opportunity to present oral

testimony at a public hearing. However, the Director 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 Marjorie D. Ruhf, Wine, Beer and Spirits Regulations Branch, 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 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.** Section 9.93 is amended by revising paragraph (c)(11), by revising paragraphs (c)(17) and (c)(18), and by adding new paragraph (c)(19) to read as follows:

#### § 9.93 Mendocino.

\* \* \* \* \*

(c) Boundaries. \* \* \*

(11) Thence in a straight line in a northwest direction to the junction of Baily Gulch and the South Branch, North Fork of the Navarro River, located in Section 8, T.15N., R.15W.;

\* \* \* \* \*

(17) Thence continuing in a straight line in a southerly direction to the southwest corner of Section 5, T. 12 N., R. 13 W., and the Mendocino County/Sonoma County line;

(18) Thence continuing in a straight line in a southeasterly direction to the intersection of the southwest corner of Section 32, T. 12 N., R. 11 W., and the Mendocino County/Sonoma County line;

(19) Thence following the Mendocino County/Sonoma County line in an easterly, northerly, and then an easterly direction to the beginning point.

**Par. 3.** A new § 9.157 is added to subpart C to read as follows:

#### § 9.157 Yorkville Highlands.

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

(b) *Approved maps.* The appropriate maps for determining the boundary of the Yorkville Highlands viticultural area are the following six U.S.G.S. topographical maps (7.5 minute series, 1:24000 scale):

(1) "Gube Mountain, Calif.," provisional edition 1991.

(2) "Big Foot Mountain, Calif.," provisional edition 1991.

(3) "Cloverdale, Calif.," 1960, photoinspected 1975.

(4) "Ornbaun Valley Quadrangle, Calif.," provisional edition, 1991.

(5) "Yorkville, Calif.," provisional edition, 1991.

(6) "Hopland, Calif.," 1960, photoinspected 1975.

(c) *Boundary.* The Yorkville Highlands viticultural area is located in Mendocino County, California. The boundary is as follows:

(1) The beginning point is Benchmark 680, located in Section 30, T. 12 N., R. 13 W., on the Ornbaun Valley quadrangle map;

(2) From the beginning point, the boundary proceeds in a straight line in a northeasterly direction to a point intersecting the North Fork of Robinson Creek and the Section 20, T. 13 N., R. 13 W.;

(3) The boundary then proceeds in a straight line in a southeasterly direction to the summit of Sanel Mountain, located at the southeast corner of Section 30, T. 13 N., R. 12 W., on the Yorkville quadrangle map;

(4) The boundary then proceeds in a straight line in a southeasterly direction until it reaches the southeast corner of Section 15, T. 12 N., R 11 W., on the Hopland quadrangle map;

(5) The boundary then proceeds south, following the eastern boundaries of Sections 22 and 27, T. 12 N., R 11 W., until it reaches the Mendocino-Sonoma County line on the Cloverdale quadrangle map;

(6) The boundary then follows the Mendocino-Sonoma county line west, south and west until it reaches the southwest corner of Section 32, T. 12 N. R. 11 W.;

(7) The boundary then diverges from the county line and proceeds in a northwesterly direction, traversing the Big Foot Mountain quadrangle map, until it reaches the southwest corner of Section 5, T. 12 N., R. 13 W. on the Ornbaun Valley quadrangle map;

(8) The boundary proceeds in a straight line in a northerly direction until it reaches the beginning point at Benchmark 680.

Approved: July 16, 1997.

**John W. Magaw,**  
Director.

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