

submissions and oral presentations (if any), and then decide whether to forward a recommendation for sanction to the Commission. If the General Counsel decides not to forward a written sanction recommendation, the matter is closed, and the General Counsel will inform the attorney and the Executive Director in writing.

(4) The General Counsel's decision to close the matter during the first or second stage is final and nonreviewable.

(c)(1) The third stage begins when the General Counsel forwards the record to the Commission. The record will consist of the complaint, all information submitted in writing during the second stage or at the oral presentation, exhibits, the transcript of any oral presentation, and the General Counsel's written sanction recommendation. The Commission will review the record and decide to impose a sanction or close the matter. The Secretary of the Commission will inform the attorney and the Executive Director in writing of the decision.

(2) At the beginning of the third stage, the General Counsel will designate a lawyer employed by the Commission and not involved in the matter to advise the Commission.

(3) The Executive Director and the General Counsel may designate someone employed by the Commission to act for them at any stage under this procedure.

#### **§ 1026.5 Sanctions.**

(a) The following are possible sanctions against an attorney for prohibited conduct:

(1) Censure. Issue a public censure to the attorney that describes the misconduct.

(2) Suspension. Suspend the attorney, for a designated period of time, from participation in any matter before the Commission.

(3) Permanent Exclusion. Permanently bar the attorney from participation in any matter before the Commission.

(4) Other. Any sanction deemed appropriate by the Commission.

(b) If any sanction is imposed, the General Counsel will notify all state and District of Columbia bars before which the attorney is admitted to practice.

#### **§ 1026.6 Information disclosure.**

Information disclosure under this section is governed by the provisions of the Freedom of Information Act and 16 CFR Part 1015.

Dated: October 30, 2000.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

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**BILLING CODE 6355-01-P**

## **DEPARTMENT OF THE TREASURY**

### **Bureau of Alcohol, Tobacco and Firearms**

#### **27 CFR Part 9**

**[Notice No. 905]**

**RIN 1512-AA07**

#### **Long Island Viticultural Area (2000R-170P)**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area to be known as "Long Island," located in Nassau and Suffolk counties, New York. This viticultural area encompasses the two existing appellations, "The Hamptons" and "North Fork of Long Island," as well as the addition of the remaining areas of Nassau and Suffolk counties. This proposal is the result of a petition filed by Richard Olsen-Harbach on behalf of Raphael Winery and the Petrocelli Family, as well as Karen Meredith of Broadfields. Mr. Olsen-Harbach believes that the region he refers to as "Long Island" possesses viticultural conditions which are distinguishable from the rest of New York State and the bordering areas of New Jersey and Connecticut.

**DATES:** Written comments must be received by January 5, 2001.

**ADDRESSES:** Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221, (Attention: Notice No. 905). See "Public Participation" section of this notice if you want to comment by facsimile or e-mail.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-9347).

#### **SUPPLEMENTARY INFORMATION:**

##### **1. Background on Viticultural Areas**

*What Is ATF's Authority To Establish a Viticultural Area?*

ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) on

August 23, 1978. This decision revised the regulations in 27 CFR part 4, Labeling and Advertising of Wine, to 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 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, American Viticultural Areas, for providing the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

#### *What Is the Definition of an American Viticultural Area?*

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

#### *What Is Required to Establish a Viticultural Area?*

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- 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
- A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

#### **2. Long Island Petition**

ATF has received a petition from Richard Olsen-Harbach on behalf of Raphael Winery, the Petrocelli Family, and Karen Meredith of Broadfields, proposing to establish a viticultural area in Nassau and Suffolk counties, New York, to be known as "Long Island." This proposed viticultural area encompasses the two existing appellations, "The Hamptons, Long Island" and "North Fork of Long

Island,” as described in 27 CFR 9.101 and 9.113, as well as the remaining areas of Nassau and Suffolk counties, New York. The proposed area does not include Kings County (Brooklyn) or Queens County, New York.

The proposed area encompasses approximately 1,170 square miles or 749,146 acres. Over 2,500 acres of vineyards are currently planted in the proposed “Long Island” viticultural area and the area presently boasts thirty-eight vineyard and/or winery businesses.

#### *What Name Evidence Has Been Provided?*

The petitioner offered the following as evidence that the name “Long Island” refers to the proposed area. The name “Long Island” has been in continuous use from 1616 to the present to represent the island on which the proposed viticultural area is located. However, the *Long Island Travel Guide* (1997) states that the name “Long Island” is commonly known to mean Nassau and Suffolk counties exclusively. Also, the 1999 *Long Island Almanac* (33rd ed.) covers Nassau and Suffolk counties only.

According to the petitioner, the *Bell Atlantic White Pages* lists approximately 1,150 business telephone listings in Suffolk and Nassau counties using the term “Long Island.” By comparison, the *White Pages* in Brooklyn and Queens reflect almost no usage of the term “Long Island” to describe businesses located there. In addition, the petitioner submitted, as evidence, several maps, newspaper, and magazine articles which refer to the proposed viticultural area as “Long Island.”

#### *What Boundary Evidence Has Been Provided?*

The petitioner has submitted, as boundary evidence, the following maps on which the name “Long Island” prominently appears:

1. U.S.G.S. Map (New York, N.Y.; N.J.; Conn. 1960 (revised 1979));
2. U.S.G.S. Map (Hartford, Conn.; N.Y.; N.J.; Mass. 1962 (revised 1975)); and
3. U.S.G.S. Map (Providence, R.I.; Mass.; Conn.; N.Y. 1947 (revised 1969)).

The proposed “Long Island” viticultural area is located on the eastern part of Long Island, New York. The proposed area is surrounded by the Queens County line on the west, Long Island Sound to the north, the Atlantic Ocean to the south and Block Island Sound and Fishers Island Sound to the east.

Long Island, New York, has four counties: Kings (commonly known as Brooklyn), Queens, Nassau, and Suffolk. The petitioner contends that the appropriate western boundary for the proposed area is the Queens County line because Kings and Queens counties are not suitable for viticultural purposes. The petitioner states that commercial farms no longer exist in Kings or Queens counties and that these counties are densely populated urban areas. In addition, the name “Long Island” is used in common parlance to refer to the Nassau and Suffolk counties exclusively.

#### *What Evidence Relating to Geographical Features Has Been Provided?*

- **Soil:** The soils of the proposed “Long Island” viticultural area are glacial in origin. The petitioner asserts that in general, the soils of the proposed area contain a greater percentage of sand and gravel and a lower percentage of silt, loam and clay than in the soil associations and series found in bordering areas. According to the petitioner, soils in the proposed area also lack any real percentage of natural limestone when compared to surrounding regions. The petitioner asserts that the soils of the proposed area are more acidic and make an agricultural liming program indispensable to any vineyard operation. Because of this factor, the soils of the proposed area are also slightly lower in natural fertility and water-holding capacity than neighboring areas. According to the petitioner, this difference in soil types leads to a very unique and distinct “terroir” for the proposed area—sandy loams will warm up faster, drain better, and allow deeper root penetration than soils in bordering areas, which contain greater amounts of silt, clay and rock.

The soils of the proposed “Long Island” viticultural area are fairly uniform in that they are predominately glacial till and glacial outwash in nature, are very low in organic matter, and contain few, if any, large mineral deposits or exposed rock formations. Many of the soil series including the Wallington, Sudbury, Scio, Montauk, Plymouth and Riverhead Soil Series are common throughout the entire proposed area.

The petitioner states that one of the most distinctive features of the proposed “Long Island” viticultural area is the vast quantity of sandy loam soil deposited during the Pleistocene Epoch of the Quarternary Period. This soil was deposited during the last four major glacial stages of this Epoch. From oldest to youngest they are: Nebraskan,

Kansan, Illoian, and Wisconsin. Because of this, the area between the surface soil and bedrock areas is several hundred feet.

By contrast, the nearest surface bedrock begins near the Queens County line. Some areas of Queens show exposed bedrock formations while the bedrock layer in the proposed “Long Island” viticultural area can be as much as 500 feet below the surface. For this reason, the soils found in Queens County are much shallower than the typical soils found in the proposed area and are not suitable for growing grapes. In addition, Queens County, which is considered part of New York City, is completely urbanized and contains essentially no agricultural land. The petitioner states that most of the soil series now identified in Queens are known as anthropogenic soils. These soils are described as having properties that are dominantly derived from human activities. Out of the 30 soil types found in the region of Queens County, only three are also found in the proposed “Long Island” viticultural area.

- **Topography and Terrain:** The petitioner states that the proposed “Long Island” viticultural area is unique from its bordering regions in that it lacks any real undulations, rock outcrops or muckland areas. By contrast, the Highland Basin, located immediately to the west-northwest of the proposed area and encompassing the areas of northern New Jersey, the Hudson Highlands region of southern New York (including Manhattan, Westchester, the Bronx, and parts of Brooklyn and Staten Island), and upland parts of Connecticut, is a rugged, hilly-to-mountainous terrain. Similarly, the Newark and Atlantic Basins, located directly to the northeast and southwest of the proposed area, contain characteristic sedimentary sandstones and mudrocks that usually bear a red or brownish appearance from an abundance of iron oxide minerals (hematite and limonite). None of these geologic formations exist in the proposed area.

- **Climate:** The petitioner states that the moderating influence of the proposed “Long Island” viticultural area’s surrounding water is evident in the temperature data. In terms of average temperatures, the proposed area shows the highest average annual winter temperature compared to the surrounding areas. The proposed area’s average low temperature over thirty years is 43.5 degrees Fahrenheit (43.5 °F), 2.5 °F warmer than the area of Westchester County and downstate New York, and 2.2 °F warmer annually than

the average from New Jersey. The proposed area is also over 4 °F warmer on average than Connecticut.

The petitioner states that the proposed "Long Island" viticultural area also has the least extreme winter low temperatures than its surrounding areas with the lowest average being -5.67 °F. New Jersey was 1.63 °F colder at -7.3 °F. Westchester/Downstate New York and Connecticut were seen to have winter low temperatures considerably colder than the proposed area. Connecticut can experience temperatures as low as -13.5 °F which is 7.83 °F colder than the proposed area. Westchester/Downstate New York proved to be the coldest with low temperatures reaching -15.3 °F in some years which is 9.63 °F colder than the proposed area.

According to the petitioner, based on the standard University of California at Davis (UCD) temperature summation definition of climatic regions or zones, the proposed "Long Island" viticultural area would appear to fall into high Region II (less than 3,000 degree days). Connecticut on the average is a borderline Region II with some years having Region I (less than 2,500 degree days) conditions. New Jersey is solidly classified as a Region III (less than 3,500 degree days), with some locations approaching Region IV (less than 4000 degree days) status in warmer years. The proposed area historically has an average of 166 more degree-days than Westchester/Downstate NY and as much as 324 more degree-days than Connecticut.

The petitioner states that on average, the proposed "Long Island" viticultural area experiences 204 frost-free days during the growing season. This is 31 days longer than New Jersey, 37 days longer than Westchester/Downstate NY and as much as 50 days longer than the Connecticut average. The proposed area can therefore have as much as four to seven weeks more growing season than any of the surrounding land masses.

The petitioner states that on an average annual basis, the proposed "Long Island" viticultural area has the lowest levels of precipitation of all the surrounding areas with 42 inches annually. The annual difference is 3.4 inches less than Westchester/Downstate NY, 3.8 inches less than New Jersey and 4.1 inches less than Connecticut. The reason for this difference is attributed to the moderating influence of Long Island Sound waters.

### 3. Regulatory Analyses and Notices

#### *Is This a Significant Regulatory Action as Defined by 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.

#### *How Does the Regulatory Flexibility Act Apply to This Proposed Rule?*

The proposed regulations will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement or 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.

#### *Does the Paperwork Reduction Act Apply to This Proposed Rule?*

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 of proposed rulemaking because no requirement to collect information is proposed.

### 4. Public Participation

#### *Who May Comment on This Notice?*

ATF requests comments from all interested parties. In addition, ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. 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.

#### *Can I Review Comments Received?*

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 the Liaison and Public Information, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226. For information on filing a Freedom of Information Act request for a copy of the comments, please refer to the internet address: <http://www.atf.treas.gov/about/foia/foia.htm>.

#### *Will ATF Keep My Comments Confidential?*

ATF will not recognize any comment as confidential. All comments and materials will be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments. We will also disclose the name of any person who submits a comment.

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.

#### *How Do I Send Facsimile Comments?*

You may submit comments by facsimile transmission to (202) 927-8525. Facsimile comments must:

- Be legible.
- Reference this notice number.
- Be on paper 8½" × 11" in size.
- Contain a legible written signature.
- Be not more than three pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

#### *How Do I Send Electronic Mail (E-Mail) Comments?*

You may submit comments by e-mail by sending the comments to [nprm@atfhq.atf.treas.gov](mailto:nprm@atfhq.atf.treas.gov). You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address.
- Reference this notice number.
- Be legible when printed on not more than three pages, 8½" × 11" in size.

We will not acknowledge receipt of e-mail. We will treat comments submitted by e-mail as originals.

#### *How Do I Send Comments to the ATF Internet Web Site?*

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF internet web site at <http://www.atf.treas.gov>.

### 5. Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations Division,

Bureau of Alcohol, Tobacco and Firearms.

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

Administrative practice and procedure, Consumer protection, Viticultural areas, 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.

**Subpart C—Approved American Viticultural Areas**

**Par. 2.** Subpart C is amended by adding § 9.170 to read as follows:

**§ 9.170 Long Island**

(a) Name. The name of the viticultural area described in this section is “Long Island.”

(b) Approved Maps. The appropriate maps for determining the boundary of the Long Island viticultural area are three United States Geological Survey (U.S.G.S.) topographic maps (Scale: 1:250,000). They are titled:

(1) “New York, N.Y.; N.J.; Conn.,” 1960 (revised 1979);

(2) “Hartford, Conn.; N.Y.; N.J.; Mass.,” 1962 (revised 1975); and

(3) “Providence, R.I.; Mass.; Conn.; N.Y.,” 1947 (revised 1969).

(c) Boundaries. The Long Island viticultural area includes approximately 1,170 square miles or 749,146 acres and is made up of the counties of Nassau and Suffolk, New York, including all off shore islands in those counties.

Approved: October 27, 2000.

**Bradley A. Buckles,**

*Director.*

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