

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-448; Re: Notice No. 897]

RIN: 1512-AA07

Red Mountain Viticultural Area (99R-367P)

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

ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision will establish a viticultural area within the State of Washington to be called "Red Mountain." The new viticultural area is within Benton County and entirely within the existing Yakima Valley viticultural area as described in 27 CFR 9.69. This viticultural area is a result of a petition submitted by Mr. Lorne Jacobson of Hedges Cellars.

EFFECTIVE DATE: Effective June 11, 2001.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, Regulations Division, 111 W. Huron Street, Room 219, Buffalo, New York 14202-2301, (716) 551-4048.

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 on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692), which added 27 CFR part 9, American Viticultural Areas, for 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?

An American viticultural area is a delimited grape-growing region distinguishable by geographic 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 characteristics (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 (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

2. Rulemaking Proceeding

Red Mountain Petition

Mr. Lorne Jacobson of Hedges Cellars petitioned ATF for the establishment of a viticultural area within the State of Washington to be known as "Red Mountain." The viticultural area is entirely within the existing Yakima Valley viticultural area described in 27 CFR 9.69 and encompasses approximately 4,040 acres, of which approximately 600 acres are planted to vineyards.

Comments to Notice of Proposed Rulemaking

A Notice of Proposed Rulemaking, Notice No. 897, was published in the **Federal Register** on May 19, 2000, requesting comments from all interested persons concerning the proposed viticultural area. ATF received nine letters of comment in response to this notice. A majority of these supported the adoption of the viticultural area as proposed.

Two dissenting letters of comment were received. One was from Evelyn Skelton, owner of Oakwood Cellars, a winery just outside the viticultural area boundaries. The other commenter, an area resident and self-described wine enthusiast, submitted comments nearly identical to those of Ms. Skelton.

In her comments, Ms. Skelton supported the creation of the Red Mountain viticultural area, but proposed amending the western boundary to include her vineyard and

winery. Oakwood Cellars is immediately west of the proposed viticultural area, within 1,000 feet of the Yakima River, at an approximate elevation of 450-480 feet. Ms. Skelton argued that the use of the 560-foot elevation line as part of the boundary was arbitrary, and that soil and climate conditions at lower elevations are similar to those in the proposed area. She further argued that the evidence presented by the petitioner for this boundary was vague, and that scientific criteria should be used to determine the boundary. Ms. Skelton did not, however, submit any evidence to support her contention that the conditions on her property are similar to those in the viticultural area.

Response of the Petitioner

The petitioner, in counter comments, argued that the criteria used to determine the western boundary were not arbitrary, but based on scientific data. He maintained that Oakwood Cellars and other sites adjacent to the Yakima River have different soils and growing conditions than those on Red Mountain and should not be included in the viticultural area. Along with his comments, the petitioner submitted the following maps:

- Soil survey maps issued by the Soil Conservation Service, U.S. Department of Agriculture, in cooperation with the Washington Agricultural Experiment Station;
- Maps depicting flood hazard areas issued by the Federal Emergency Management Agency (FEMA); and
- A land use map issued by the Benton County Planning Department.

The petitioner noted that all these maps show a delineation between the land immediately adjacent to the Yakima River and the land within the viticultural area. The FEMA map, for example, designates the land adjacent to the river as a floodplain—the viticultural area, at a higher elevation, is not part of the floodplain. The land use map designates the area within the viticultural area as an agricultural district zone, while land adjacent to the river is part of a different zone.

The Soil Conservation Service maps, however, are the most detailed and best depict differences between the Oakwood Cellars site and Red Mountain. These maps clearly show that the soils in the Oakwood Cellars property belong to a different soil association than those in the Red Mountain viticultural area. Oakwood Cellar's property lies on soils within the Hezel-Quincy-Burbank association, with the predominant soil being Pasco silt loam. The Soil Conservation Service

describes Pasco silt loam as an alluvial, poorly draining, and very fertile soil. In contrast, Red Mountain's soils belong to the Warden-Shano association. Soils within this association are light and well draining. According to the petitioner, these soil qualities cause vine stress, which in turn results in a higher caliber of fruit.

The petitioner later filed additional comments proposing to enlarge the viticultural area by amending the southern boundary. Instead of using State Highway 224 as the southern boundary, the boundary would be moved south to a creekbed running along the southern edge of Red Mountain. This boundary change adds approximately 640 acres to the viticultural area. The petitioner gave three reasons for adding this parcel:

- First, the soils in the additional area are the same as those on the rest of Red Mountain. The Soil Conservation Service maps verify that the soils in the new area are also in the Warden-Shano soil association.
- Second, the new boundary—a creek bed—is a geographical feature, while the old boundary—a state highway—was not. Ideally, the petitioner noted, a viticultural area should be delineated by geographic, not man-made, features.
- Last, the new area encompasses land recently purchased by Evelyn Skelton of Oakwood Cellars, which, according to the petitioner, shares the distinctive characteristics of the rest of Red Mountain.

Conclusion

After careful analysis of the comments, ATF has concluded that the evidence supports retaining the original western boundary, and amending the southern boundary as proposed by the petitioner.

The evidence submitted by the petitioner, particularly the soil maps, strongly supports the petitioner's position that the land along the Yakima River does not share the same geographical characteristics as those that distinguish Red Mountain from the surrounding areas. While Ms. Skelton has stated that the soil on her Yakima River vineyard is the same as that on Red Mountain, she has offered no evidence to support this assertion. The evidence given by the petitioner, on the other hand, contradicts her position. The proposal to amend the southern boundary is, in contrast, well supported by the evidence. The Soil Conservation Service maps depict the additional land as having the same soils as the rest of Red Mountain, soils that are not found in the surrounding area.

The effect that these soils have on grape growing is acknowledged in the many wine articles submitted in the original petition. The article *Touring the Washington Wine Country*, by the Washington Wine Commission states, "This site offers * * * light soils that encourage grapevines to seek nutrients via deep roots." The petitioner, through his accumulated evidence, has established that the soil in the Red Mountain area is a significant part of what distinguishes Red Mountain from the surrounding areas.

3. Evidence Submitted With Petition

What Name Evidence Was Provided?

The petitioner submitted as evidence of name recognition several newspaper and magazine articles referencing Red Mountain as a wine producing area. These publications include: *The Seattle Post-Intelligencer*; *Globe and Mail*, (Toronto); *Wine Access* (Canada); *Decanter* (UK); and *Wine* (UK). Other sources cited by the petitioner as referring to the wines of Red Mountain include: *Decanter Magazine Guide to Oregon, Washington State and Idaho* (Third Edition, 1996); *Touring the Washington Wine Country*, published by the Washington Wine Commission (1997 edition); and *Connoisseur's Guide to California* (July 1997 edition).

Several of these references describe Red Mountain as having distinctive qualities that are conducive to grape growing. Examples include:

- *Decanter Magazine Guide to Oregon, Washington State and Idaho* (Third Edition, 1996): "The Red Mountain region, at the confluence of the Columbia, Snake and Yakima rivers, is a relatively warm area, and vineyards on upper slopes, again with south facing aspects, are yielding superior wine. . . . Evidence is mounting to indicate that Red Mountain may be one of the genuine special vineyard sites."

- *Wine Access*, November 1998: "Although most of Eastern Washington's vineyards bask in a hot, dry climate, Klipsun [an area vineyard] sits between a gap in the Rattlesnake and Red Mountains in the lower Yakima Valley that is regularly blessed with slightly cooler air that filters through the gap from Canada. This, along with its stingy soils best described as sandy, silty loam, and silty loam over gravel, helps to explain the elegant, concentrated nature of the Klipsun fruit."

- *Touring the Washington Wine Country*, by the Washington Wine Commission (1997 edition): "Many of the award-winning Cabernet Sauvignons that emerged from Washington's first

quarter-century of fine winemaking used a percentage of their fruit from the vineyards sloping down from Red Mountain toward the Yakima River just above Benton City near Richland. This site offers good air drainage and light soils that encourage grapevines to seek nutrients via deep roots. Irrigated vineyards allow the grape growers to control vine vigor and to ease the vines into dormancy before winter."

What Boundary Evidence Was Provided?

The petitioner submitted as boundary evidence one U.S.G.S. map titled "Benton City, Washington" (1974) on which Red Mountain is prominently labeled. The proposed viticultural area starts on the ridgeline of Red Mountain and then sweeps down in a triangle toward the southwest, encompassing the southern slope of the mountain down to an elevation of 560 feet. There are currently 13 vineyards on Red Mountain, all on the southwestern slope and within the boundaries. The oldest of these vineyards was planted in 1975. According to the petitioner, these boundaries contain a grape growing area with a distinctive character based on soil, topography and climate.

What Evidence Relating to Geographical Features Has Been Provided?

The geographical and climatic features of Red Mountain distinguish it from the surrounding Yakima Valley viticultural area.

- *Soil*: The petitioner stated that Red Mountain's soil associations (landscapes with distinctive proportional patterns of soils) are unique in the Yakima Valley viticultural area. In support of this statement, the petitioner submitted soil survey maps issued by the U.S. Department of Agriculture's Soil Conservation Service for the Yakima County and Benton County areas. Using these maps, the petitioner compared the soil associations for Red Mountain and other grape growing areas in the Yakima Valley viticultural area.

According to the Benton County area soil survey maps, the dominant soil association of Red Mountain is Warden-Shano. A more specific analysis reveals that the following soils are present within the Warden-Shano association: Warden silt loam, Hezel loamy fine sand, Scooteney silt loam, and Kiona very stony silt loam. The petitioner compared this data with soil data for Glead, Buena, and Sunnyside, other grape growing areas in Washington State within the Yakima Valley viticultural area. The soil associations of these areas are composed of Weirman-Ashue, Harwood-Gorst-Selah, Ritzville-

Starbuck, Cowiche-Roza, Warden Esquatzel, and Quincy-Hezel. Thus, argued the petitioner, Red Mountain has a soil association that sets it apart from the rest of the Yakima Valley viticultural area.

- *Climate:* According to the petitioner, temperatures on Red Mountain tend to be hotter during the growing season than those in other areas of the Yakima Valley viticultural area.

To support this contention, the petitioner submitted temperature data gathered from weather stations in the Washington Public Agriculture Weather System administered by Washington State University. He compared data from the weather stations of Benton City, Sunnyside, Buena, and Glead, all located in the Yakima Valley viticultural area. The Benton City station is located on Red Mountain within the proposed viticultural area. A comparison of average annual air temperatures for the years 1995 through 1999 shows that the Benton City station consistently had the warmest temperatures. The average temperature difference between Benton City and Glead, the coolest site, ranged from 3.92 to 5.61 degrees.

The petitioner stated that the difference of only a few degrees over the course of a growing season can produce dramatic results on the enological characteristics of wine. He further stated that Red Mountain is typically the first grape growing area in Washington State to harvest grapes because of its warmer temperatures. According to the petitioner, the warmer temperatures also help to produce fully mature, ripe grapes with exceptional balance that differ substantially in quality from those of other growing areas in the state.

- *Topography:* Existing vineyards in the viticultural area lie on the southwest-facing slope of Red Mountain. Elevation ranges of these vineyards are from approximately 600 to 1,000 feet. The petitioner noted that there is an immense gap separating the northwest end of Red Mountain from the southeast extremity of nearby Rattlesnake Ridge. He stated that cooler, continental air masses flow south from Canada through this gap. In addition, the Yakima River flows north around Red Mountain before joining the Columbia River, creating an air drainage system. The petitioner further stated that these characteristics, along with the predominantly southwest facing slope of Red Mountain, serve to flush the warm daytime air off the face of Red Mountain and replace it with a cooler air mass. According to the petitioner, the resulting growing environment yields grapes that are both high in sugar

(due to warmer daytime temperatures) and high in acid (due to lower evening temperatures).

4. Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Final Rule?

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 rule because no requirement to collect information is imposed.

How Does the Regulatory Flexibility Act Apply to This Final Rule?

These regulations will not have a significant economic impact on a substantial number of small entities. ATF does not wish to give the impression that by approving the Red Mountain viticultural area it is endorsing wine produced in the area. ATF is approving the area as being viticulturally distinct from surrounding areas, not better than other areas. The establishment of the Red Mountain viticultural area merely allows its 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.

Accordingly, a regulatory flexibility analysis is not required. The final rule is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

5. Drafting Information

The principal author of this document is Jennifer Berry, 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 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 § 9.167 to read as follows:

§ 9.167 Red Mountain

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

(b) *Approved Maps.* The appropriate map for determining the boundaries of the Red Mountain viticultural area is one U.S.G.S. map titled "Benton City, Washington" 7.5 minute series (topographic), (1974).

(c) *Boundaries.* The Red Mountain viticultural area is located within Benton County, Washington, entirely within the existing Yakima Valley viticultural area. The boundaries are as follows:

(1) The northwest boundary beginning on this map at the intersection of the 560-foot elevation level and the aqueduct found northwest of the center of section 32.

(2) Then following the aqueduct east to its endpoint at an elevation of approximately 650-feet, again in section 32.

(3) From this point in a straight line southeast to the 1173-foot peak, located southeast of the center of section 32.

(4) From this peak southeast in a straight line across the lower southwest corner of section 33 to the 1253-foot peak located due north of the center of section 4.

(5) Then in a straight line southeast to the 1410-foot peak located in the southwest corner of section 3.

(6) From this peak in a straight line southeast to the border of sections 10 and 11 where the power line crosses these two sections. This intersection is northeast of the center of section 10 and northwest of the center of section 11.

(7) From this point in a straight line south following the border of sections 10 and 11 to the corner of sections 10, 11, 15, and 14. This point has an elevation of 684 feet.

(8) From this point southwest in a diagonal to the 700-foot elevation line and then following this 700-foot elevation through Section 15 and into section 16.

(9) Then following the 700-foot elevation line southwest ¼ mile in a southwest diagonal until it meets the creek bed.

(10) Following the creek bed southwest through section 16, across the extreme southeast corner of section 17 and into the northeast corner of section 20 to a point

where the creek bed meets the 560-foot elevation point.

(11) From this 560-foot elevation point, running north along this elevation line through section 17, through section 8, through section 5 and through section 32 until meeting the beginning point at the aqueduct in section 32.

Signed: March 6, 2001.

Bradley A. Buckles,

Director.

Approved: March 15, 2001.

Timothy E. Skud,

*Acting Deputy Assistant Secretary,
(Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 01-8795 Filed 4-9-01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01-01-034]

RIN 2115-AE46

Special Local Regulation: Harvard-Yale Regatta, Thames River, New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice puts into effect the permanent regulations for the annual Harvard-Yale Regatta, a rowing competition held on the Thames River in New London, CT. The regulation is necessary to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the event, thus providing for the safety of life and property on the affected navigable waters.

DATES: The regulations in 33 CFR 100.101 are effective on June 3, 2001, and June 4, 2001, from 2:30 p.m. to 8 p.m.

FOR FURTHER INFORMATION CONTACT: Chief William M. Anderson, Office of Search and Rescue, First Coast Guard District, (617) 223-8460.

SUPPLEMENTARY INFORMATION: These regulations will be effective from 2:30 p.m. until 8 p.m. on June 3, 2001. If the event is cancelled due to inclement weather, then these regulations will be effective from 2:30 p.m. until 8 p.m. on June 4, 2001.

This notice implements the permanent special local regulation governing the 2001 Harvard-Yale Regatta. A portion of the Thames River in New London, Connecticut will be closed during the effective period to all

vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area of the river between the Penn Central drawbridge and Bartlett's Cove. Additional public notification will be made via the First Coast Guard District Local Notice to Mariners and marine safety broadcasts. The full text of this regulation is found in 33 CFR 100.101.

Dated: March 21, 2001.

G.N. Naccara,

*Rear Admiral, U.S. Coast Guard, Commander,
First Coast Guard District.*

[FR Doc. 01-8762 Filed 4-9-01; 8:45 am]

BILLING CODE 4910-15-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01-01-037]

Drawbridge Operation Regulations: Taunton River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Brightman Street Bridge, at mile 1.8, across the Taunton River between Somerset and Fall River, Massachusetts. This deviation allows the bridge owner to keep the bridge in the closed position from 9 p.m. on May 4, 2001 through 4 p.m. on May 11, 2001. This action is necessary to facilitate necessary maintenance at the bridge.

DATES: This deviation is effective from May 4, 2001 through May 11, 2001.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, at (617) 223-8364.

SUPPLEMENTARY INFORMATION: The Brightman Street Bridge, at mile 1.8, across the Taunton River, has a vertical clearance of 27 feet at mean high water, and 31 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.619.

The bridge owner, the Massachusetts Highway Department (MHD), requested a temporary deviation from the drawbridge operating regulations to facilitate necessary structural maintenance and repairs at the bridge.

This deviation from the operating regulations allows the bridge owner to keep the bridge in the closed position from 9 p.m. on May 4, 2001 through 4

p.m. on May 11, 2001. The upstream waterway facilities were contacted by the Coast Guard regarding this closure and no objections were received. Vessels that can pass under the bridge without an opening may do so at all times during the closed period.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 2, 2001.

Gerald M. Davis,

*Captain, U.S. Coast Guard, Acting
Commander, First Coast Guard District.*

[FR Doc. 01-8763 Filed 4-9-01; 8:45 am]

BILLING CODE 4910-15-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-6965-4]

RIN 2060-AE56

Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978; Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: The EPA is taking direct final action to amend the emissions monitoring and compliance provisions contained in Subpart Da—Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978, and Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units. This action adds monitoring exemptions and alternative compliance requirements for duct burners, as well as amendments to correct errors in subparts Da and Db. We are adopting these amendments to ensure that all owners or operators of duct burners have similar compliance requirements and exemptions for their monitoring requirements.

DATES: This direct final rule will be effective on June 11, 2001 without further notice, unless significant adverse comments are received by May 10, 2001. If adverse comment is received EPA will publish a timely withdrawal informing the public the rule will not take effect.