

requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cylinder head separation, inflight loss of power, possible engine failure, and fire, accomplish the following:

(a) Within 5 hours Time in Service (TIS) after the effective date of this AD, for engines with 300 or more hours TIS since installation of the affected cylinder assemblies on the effective date of this AD, remove from service affected cylinder assemblies and replace with serviceable parts.

(b) Within 5 hours TIS after the effective date of this AD, for engines with 245 hours but less than 300 hours TIS since installation of the affected cylinder assemblies on the effective date of this AD, accomplish the following:

(1) Perform an initial dye penetrant inspection for cracks in accordance with Superior Air Parts, Inc. Mandatory Service Bulletin (MSB) No. 96-002, Revision A, dated December 17, 1996, or remove and replace with a serviceable part.

(2) Thereafter, perform repetitive dye penetrant inspections for cracks at intervals not to exceed 25 hours TIS since last inspection, in accordance with Superior Air Parts, Inc. MSB No. 96-002, Revision A, dated December 17, 1996, or remove and replace with a serviceable part.

(3) Prior to further flight, remove from service cylinder assemblies found cracked during dye penetrant inspections and replace with serviceable parts.

(4) Upon accumulating 300 hours TIS since installation of the affected cylinder assemblies, prior to further flight remove from service affected cylinder assemblies and replace with serviceable parts.

(c) For engines with less than 245 hours TIS since installation of the affected cylinder assemblies on the effective date of this AD, accomplish the following:

(1) Upon accumulating 250 hours TIS since installation of the affected cylinder assemblies, perform an initial dye penetrant inspection for cracks in accordance with Superior Air Parts, Inc. MSB No. 96-002, Revision A, dated December 17, 1996, or remove and replace with a serviceable part.

(2) Thereafter, perform repetitive dye penetrant inspections for cracks at intervals not to exceed 25 hours TIS since last inspection, in accordance with Superior Air Parts, Inc. MSB No. 96-002, Revision A, dated December 17, 1996, or remove and replace with a serviceable part.

(3) Prior to further flight, remove from service cracked cylinder assemblies and replace with serviceable parts.

(4) Upon accumulating 300 hours TIS since installation of the affected cylinder assemblies, prior to further flight remove from service affected cylinder assemblies and replace with serviceable parts.

(d) For the purpose of this AD, a serviceable part is defined as a cylinder assembly other than a Superior Air Parts, Inc. PMA part number SL54000 -A1, -A2, -A2P, -A20P, and A21P replacement cylinder assembly, with serial numbers 001 through 650.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Special Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Special Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Special Certification Office.

(f) Special flight permits in accordance with Sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) may not be issued.

(g) The actions required by this AD shall be accomplished in accordance with the following Superior Air Parts, Inc. MSB:

Document No.	Pages	Revision	Date
96-002	1-4	A	December 17, 1996.
Total pages 4.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Superior Air Parts, Inc., 14280 Gillis Road, Dallas, TX 75244-3792; telephone (800) 400-5949, fax (972) 702-8723. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective April 22, 1997, to all persons except those persons to whom it was made immediately effective by priority letter AD 97-01-04, issued December 27, 1996, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on March 26, 1997.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.
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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF-388; Ref. Notice Nos. 581, 749 and 793]

RIN 1512-AB08

Gamay Beaujolais Wine Designation (92F-042P)

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

ACTION: Treasury Decision, Final Rule.

SUMMARY: This final rule amends the wine labeling regulations to allow use of the term "Gamay Beaujolais" on American wine labels for a period of 10 years. From the time this final rule takes effect until the end of the phase-out period, a wine which derives not less than 75 percent of its volume from Pinot noir grapes, Valdiguié ("Napa Gamay") grapes, or a combination of both varieties, may use "Gamay Beaujolais"

as a type designation of varietal significance. However, from January 1, 1999, until the end of the phase-out period, brand labels using the designation "Gamay Beaujolais" must also bear in direct conjunction therewith the varietal names Pinot noir and/or Valdiguié, along with the following statement on the brand or back label: "Gamay Beaujolais is made from at least 75 percent Pinot noir and/or Valdiguié grapes." After the expiration of the phase-out period, the term "Gamay Beaujolais" will no longer be recognized as a designation for American wines.

EFFECTIVE DATE: This final rule is effective May 7, 1997.

FOR FURTHER INFORMATION CONTACT:

Thomas B. Busey, Wine, Beer and Spirits Regulation Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, Telephone: (202) 927-8230.

SUPPLEMENTARY INFORMATION:

The Federal Alcohol Administration Act

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director, ATF, as a delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer, and to provide the consumer with adequate information as to the identity and quality of the product.

Regulations which implement the provisions of section 105(e) as they relate to wine are set forth in title 27, Code of Federal Regulations, part 4 (27 CFR part 4). Section 4.23(b) provides that the name of a single grape variety may be used as the type designation of a grape wine if the wine is labeled with an appellation of origin, and if not less than 75 percent of the wine is derived from grapes of that variety, the entire 75 percent of which was grown in the labeled appellation of origin area. Section 4.23(d) provides that the names of two or more grape varieties may be used as the type designation for a wine if all of the grapes used to make the wine are of the labeled varieties, and the percentage of the wine derived from each variety is shown on the label (with a tolerance of plus or minus 2 percent). Further rules are mandated for the use of varietal designations for wines labeled with multicounty or multistate appellations of origin.

Section 4.28 of the regulations was added by T.D. ATF-370, 61 FR 522 (1996). This section contains a category of type designations of varietal significance for American wines. These names designate wines which have some varietal basis, but which do not meet the requirements for use of a single varietal designation. These designations apply to wines which are composed of a mixture of specific grape varieties. ATF believes these wines demonstrate characteristics of the grape varieties used to produce them and their names imply some grape variety source. This type designation was established in regulations first promulgated in 1996.

Section 4.34(a) requires that the class and type be stated in conformity with the standards of identity in Subpart C, and in the case of still wine, there may appear in lieu of the class designation any varietal (grape type) designation, type designation of varietal significance, semigenic geographic designation, or geographic distinctive designation to which the wine is entitled. Additionally, § 4.34(b)(1) provides that an appellation of origin disclosing the true origin of the wine shall appear in

direct conjunction with and in lettering substantially as conspicuous as the class and type designation if a grape type (varietal) designation is used under the provisions of § 4.23 or a type designation of varietal significance is used under the provisions of § 4.28.

History of Gamay Beaujolais Name

Beaujolais is a region in France known for producing a distinctive type of wine. The "Gamay noir a jus blanc" (otherwise known as the "Gamay") is the predominant grape variety used in the production of Beaujolais wine.

In the 1940s, a grape grown in California was identified by researchers at the University of California at Davis (UCD) as the "Gamay Beaujolais" grape. At that time, it was mistakenly thought that this was the same Gamay grape grown in Beaujolais, France. For decades, American wines made from this grape were labeled as "Gamay Beaujolais."

In the late 1960's, researchers at UCD decided that the grape known as "Napa Gamay" was the true Gamay grape, and that the "Gamay Beaujolais" vine was actually a clone of Pinot noir. The Foundation Plant Material Service (FPMS) at UCD (a service operated in cooperation with UCD which makes virus-free, true type plant material available to the industry), identified the Gamay Beaujolais vine as a clonal selection of the Pinot noir variety.

Notwithstanding the conclusion that the "Gamay Beaujolais" grape was not related to the true Gamay grape variety, ATF's predecessor agency decided to allow wines produced from both the Napa Gamay and Pinot noir grape varieties to be labeled as "Gamay Beaujolais," pending a final resolution of the many controversies related to the names of grape varieties which had been erroneously identified in the United States. In the 1980s, ATF began the process of evaluating many of these varietal names, in order to formulate an authoritative list of grape varieties used to produce American wines.

Winegrape Varietal Names Advisory Committee

In 1982, ATF established the Winegrape Varietal Names Advisory Committee (referred to as the "Committee") to conduct an examination of the hundreds of grape variety names and synonyms in use in the United States. (47 FR 13623, March 31, 1982). According to its charter, the Committee was to advise the Director of the grape varieties and subvarieties which are used in the production of wine, to recommend appropriate label designations for these varieties, and to

recommend guidelines for approval of names suggested for new grape varieties. Their recommendations were restricted to the names of grapes used in producing American wines. The Committee's final report, presented to the Director in September 1984, contained the Committee's findings regarding use of the most appropriate names for domestic winegrape varieties.

The final report of the Winegrape Varietal Names Advisory Committee concluded as follows:

At present, there are substantial plantings of two varieties which include the name Gamay. Neither are the true Gamay (or one of its several clones) grown in Europe. Gamay Beaujolais is a clone of Pinot Noir, and Napa Gamay is an as yet unidentified variety, which is neither Gamay nor Pinot noir.

The Committee accepted the recommendation of its subcommittee that the names "Napa Gamay" and "Gamay Beaujolais" should be phased out. They noted that since Napa Gamay and Gamay Beaujolais (Pinot noir) were two distinctively different varieties, wine made from a blend of both grapes should not be labeled with one varietal designation. *Id.* at 27-29. The Subcommittee on Gamay Beaujolais actually recommended that "the wine known as 'Gamay Beaujolais' be considered a limited semi-generic wine produced from the grape variety Pinot noir and the grape currently known as 'Napa' Gamay, either singly or in combination with each other." The Committee's Final Report stated that the Committee had "considered a suggestion that the term Gamay Beaujolais be allowed for use on domestic wine labels as a 'semi-generic' non-varietal designation," but made no recommendation on that issue due to the conclusion that "the suggestion is outside the mandate of the Committee, which is limited solely to varietal names." The Committee did, however, note this suggestion for "possible consideration" by ATF.

Notice No. 581

On the basis of the recommendations contained in the Committee's final report, ATF issued Notice No. 581 on February 4, 1986 (51 FR 4392). That notice proposed the addition of subpart J, American Grape Variety Names to part 4. The new subpart was to contain a list of every grape varietal name authorized for use in the production of American wines. ATF received 156 written comments in response to this notice.

With respect to use of the name "Gamay Beaujolais," Notice No. 581 proposed that it should be permitted as an alternate grape variety name for future use only for a period of five years.

During the period of its continued use, Notice No. 581 proposed that the actual name of the grape, either Pinot noir or Napa Gamay, should appear on the label in direct conjunction with the designation "Gamay Beaujolais." After the passage of five years, Gamay Beaujolais could no longer be used as a label designation.

Comments to Notice No. 581

The proposal to phase out use of Gamay Beaujolais proved controversial. Only a few respondents concurred with ATF's proposal, while 27 respondents objected to some part of the proposal. Many commenters suggested that Gamay Beaujolais was well known to consumers as a light, red, young, fruity wine, and that consumers did not view it as a varietal wine. Some commenters stated that consumer recognition of Gamay Beaujolais was good; that the wine was popular; that consumers knew what they were buying, and that elimination of the designation would serve no consumer purpose. Winery proprietors and grape growers cited the large market for this wine and argued that elimination of the designation would have a severe economic impact on their businesses.

Louis P. Martini, a member of the Winegrape Names Advisory Committee, submitted a comment in opposition to the proposed 5-year phase-out period. He suggested that "[t]o remove this name from wine labels would effectively remove this wine from the market." Other industry members advocated a longer phase-out period, or objected to the phase-out altogether. On the other hand, one consumer advocate suggested that five years was too long a phase-out period, and the French Government opposed any recognition of the term "Gamay Beaujolais" in the regulations.

Notice No. 749

Because the comments on Notice No. 581 varied widely in their approach to the proposals, and because a lengthy period of time had passed since the issuance of Notice No. 581, ATF decided to open the issue of grape varietal names to additional public comment. Thus, on September 3, 1992, ATF issued Notice No. 749 (57 FR 40380), seeking comment on new and revised proposals relating to grape variety names.

By this time, UCD had determined that the grape known as "Napa Gamay" was not the Gamay grape of France. The "Napa Gamay" grape variety was positively identified by the FPMS as Valdiguié, although it is not widely known by this name in the United

States. In Notice No. 749, ATF proposed that "Napa Gamay" be considered a synonym for the prime name Valdiguié and requested comments on whether Napa Gamay should be phased out in the future. ATF also announced that the "Gamay Beaujolais" issue would be the subject of a separate notice of proposed rulemaking.

Notice No. 793

On April 5, 1994, ATF published Notice No. 793 (59 FR 15878) in the **Federal Register** proposing specific conditions for the use of Gamay Beaujolais as a wine label designation. The 90-day comment period closed on July 5, 1994.

ATF stated that the evidence considered by ATF established that "Gamay Beaujolais" was not a true varietal name, and that the two grape varieties which have been called "Gamay Beaujolais" in this country are not Gamay grapes. Thus, ATF concluded that Gamay Beaujolais should not be listed in subpart J of 27 CFR part 4 as a grape variety name. On the basis of the comments to Notice Nos. 581 and 749 and current trade and consumer recognition of the name, ATF stated that many consumers viewed Gamay Beaujolais as a type of red wine which may be described as light and fruity. However, ATF also believed that many consumers associated the designation "Gamay Beaujolais" with a wine produced from the Pinot noir or Napa Gamay grape varieties. Therefore, instead of phasing out the use of the designation "Gamay Beaujolais" as proposed in Notice No. 581, ATF proposed in Notice No. 793 to specifically allow the continued use of Gamay Beaujolais under § 4.34, relating to class and type designations. Section 4.34 was selected for placement of the Gamay Beaujolais designation because § 4.28 and the type designations of varietal significance it established did not exist in 1994.

As previously discussed, existing regulations provided that a wine was not entitled to a varietal type designation unless 75 percent of its volume is derived from grapes of that variety. Accordingly, ATF proposed to allow the use of the designation "Gamay Beaujolais" only where the wine derived not less than 75 percent of its volume from Pinot noir grapes or Napa Gamay grapes. Wine labels bearing the designation "Gamay Beaujolais" would also have been required to bear a varietal type designation (Pinot noir or Napa Gamay) and an appellation of origin. Furthermore, the proposed amendment to § 4.34 specified that the optional designation "Gamay

Beaujolais" must appear in direct conjunction with the varietal type designation and the appellation of origin, and must appear in lettering of substantially the same size and kind.

T.D. ATF-370

On January 8, 1996, ATF issued T.D. ATF-370 (61 FR 522), a final rule on the issue of grape variety names for American wines. ATF issued a comprehensive list of grape variety names approved for use on American wine labels. The final rule took effect on February 7, 1996. The name "Napa Gamay" is listed as a synonym for "Valdiguié"; however, "Napa Gamay" may only be used on labels of wines bottled prior to January 1, 1999. The name "Gamay Beaujolais" was not listed as an approved varietal name. Instead, the preamble noted that ATF has made Gamay Beaujolais the subject of a separate rulemaking proceeding. The preamble also stated that "[i]n the interim, ATF will permit domestic wineries to use Gamay Beaujolais as a designation. Such wine must derive at least 75 percent of its volume from Pinot noir, from Valdiguié (Napa Gamay), or from a mixture of these grapes." 61 FR at 532.

Comments to Notice No. 793

There were 237 comments submitted in response to Notice No. 793. 211 comments were in favor of allowing the continued use of the designation "Gamay Beaujolais" on wine labels, while 26 were opposed to any use of "Gamay Beaujolais" on American wine labels.

Comments in Favor of Proposal

The Wine Institute, American Vintners Association, winegrape growers associations, wine grape growers, wine producers, and wine wholesalers submitted comments in favor of allowing continued use of "Gamay Beaujolais" on American wine labels. However, many of these commenters took issue with some of ATF's proposals.

Some commenters suggested that the designation "Gamay Beaujolais" had lost any varietal significance, and it should not be restricted to wines made from Pinot noir or Napa Gamay grapes. Thus, for example, the American Vintners Association suggested that any light, red, young, fruity wine should be allowed the designation "Gamay Beaujolais" as long as the actual grape variety is shown on the label.

The vast majority of comments received by ATF came from wholesalers, vineyard proprietors, and wineries who supported the recognition

of "Gamay Beaujolais" in the regulations. However, these commenters opposed ATF's proposal that a wine labeled with the designation "Gamay Beaujolais" must derive 75 percent of its volume from either the Napa Gamay or Pinot noir grape variety. The comments noted that the longstanding industry practice was to blend the two grape varieties in the production of "Gamay Beaujolais" wine, and that the blend of the two distinct grape varieties should be considered as meeting the 75 percent requirement found in the regulations.

Most of the comments in favor of allowing a blend of Pinot noir and "Napa Gamay" grapes also brought up the issue of whether varietal percentages should be required on the label. ATF did not propose such a requirement in Notice No. 793, because the regulations at § 4.23 do not require a listing of percentages where 75 percent of the wine is derived from a single grape variety. However, under § 4.23(d), percentages must be listed on the label whenever two or more grape varieties are used as the type designation for a wine.

The commenters who raised this issue were opposed to listing the percentage of grape varieties on the label. Instead, they suggested that the varietal names "Pinot noir" and "Napa Gamay" be listed on the label in descending order by volume, without requiring that the percentages be shown. The Wine Institute suggested that this option would allow "the broadest amount of winemaking flexibility in achieving the Gamay Beaujolais style and minimizing consumer confusion that could result from a multiple varietal label."

While many commenters in favor of retention of the term "Gamay Beaujolais" stated that consumer recognition of this wine was good, none of the comments offered specific evidence, such as consumer surveys, on what consumers understood to be the varietal significance of the term. The Wine Institute submitted a label dating back to at least 1950, showing that the use of this name on American wine labels went back several decades, and submitted evidence tending to show that consumers had positive views about "Gamay Beaujolais" wines. However, some of this evidence actually tended to support the conclusion that some American consumers consider "Gamay Beaujolais" to be a style of wine similar to French Beaujolais wines. This evidence did not support ATF's premise in Notice No. 793 that American consumers were aware that wines labeled as "Gamay Beaujolais" were made from Pinot noir or Valdiguié grapes.

Comments in Opposition to Use of Gamay Beaujolais

Of the 26 comments received in opposition to the continued use of Gamay Beaujolais on wine labels, 13 were from importers and 4 from foreign producers-exporters. The remaining 9 comments are discussed in more detail below.

Most of these commenters strongly opposed the use of "Gamay Beaujolais" on American wine labels, stating that American wineries were continuing to use the term because they wanted to take unfair advantage of the Beaujolais name. Secondly, these commenters believed that use of the term "Gamay Beaujolais," even when modified with a geographical appellation of origin and a varietal type designation, was highly misleading and confusing to consumers, since it was being used to describe a wine that was not made from Gamay grapes, and did not originate in Beaujolais, France. However, like the comments supporting the proposal, none of the opposing comments provided specific evidence, such as consumer surveys, on the consumer's perception of the term. Finally, it was argued that continued use of the term "Gamay Beaujolais" on American wine labels constituted a violation of ATF regulations and the United States Government's commitment to prevent any erosion of protected appellations of origin.

The Delegation of the Commission of the European Communities (now the European Union) commented that the proposal would confuse and mislead consumers, since it allows "the use of the optional designation 'Gamay Beaujolais' for wine which is recognized by BATF as originating neither from a true 'Gamay' grape variety nor from the 'Beaujolais' area of France." Their comment also argued that any recognition of the designation "Gamay Beaujolais" for American wines would violate Item III of the Exchange of Letters between the EC and the United States dated July 26, 1983, as well as provisions of the Uruguay Round Agreement on Trade Related Aspects of Intellectual Property (TRIPS). This argument was based on the premise that the proposed rule would erode protection of the nongeneric designation "Beaujolais." Instead, the comment suggested implementing the shortest possible transition period for allowing the term pending its outright prohibition. The Comité Vins, the European Community association representing the Community's entire wine industry and trade, and the Fédération des Exportateurs de Vins et

Spiritueux de France (FEVS) filed similar comments in opposition to the proposed rule.

The Agricultural Attache from the French Embassy also made similar arguments, and suggested that the proposed rule would essentially create a new semigeneric designation to the detriment of a French appellation of origin already recognized by U.S. regulations.

Separate comments from the Union Viticole du Beaujolais (representing French Beaujolais growers) and the Fédération Des Syndicats de Négociants-Eleveurs de Grande Bourgogne (representing Beaujolais and Burgundy wine merchants) strongly opposed the proposed rule as misleading to consumers and in violation of U.S. international commitments.

A comment on behalf of the Deutscher Weinfonds (DW), stated that while the DW had no direct interest in this matter, it felt strongly, "as a matter of principle, that distinctive geographical designations, and distinctive grape varieties, particularly those recognized by BATF in its regulations, should in no way be diluted or compromised."

The National Association of Beverage Importers, Inc. (NABI), a trade association representing importers of wine, beer, and distilled spirits, filed a comment representing the views of the majority of its members. NABI stated that the Brown-Forman Beverage Company and Heublein, Inc. did not agree with its comment. NABI stated that use of the designation "Gamay Beaujolais" in accordance with the proposed rule was misleading to consumers, since it would be used to designate a wine produced from grapes which were not Gamay grapes, and since the product had nothing to do with the protected geographical designation "Beaujolais." NABI argued that the proposed erosion of the term "Beaujolais" was in violation of international agreements, as well as ATF's own regulations, since "Beaujolais" is recognized as a distinctive designation in 27 CFR 4.24(c). NABI recommended that ATF adopt its earlier proposal to phase out the use of the term over a five-year period commencing with the publication of the final rule.

Finally, the law firm of Ropes & Gray submitted a comment on behalf of its clients the Institut National des Appellations d'Origine ("INAO") and the Union Interprofessionnelle des Vins du Beaujolais ("UIVB"). Shortly prior to publication of Notice No. 793, the INAO and UIVB had petitioned ATF to eliminate recognition of the designation

"Gamay Beaujolais" on American wine labels. Their comment in response to Notice No. 793 argued that recognition of "Gamay Beaujolais" as a labeling term would erode the protection of the distinctive designation "Gamay Beaujolais," and would essentially create a new semigeneric wine designation. The INAO and UIVB argued that there is no objective evidence that establishes that consumers are not misled by use of the labeling designation "Gamay Beaujolais." They suggested that even if an accurate appellation of origin and varietal designation appeared on the label in conjunction with the designation "Gamay Beaujolais," consumers might still erroneously believe that the wine is made from a combination of, for example, Pinot noir and Gamay grapes, or that consumers will still be misled into believing that the wine is similar to French Beaujolais wines.

The INAO and UIVB also argued that ATF's recognition of the name "Gamay Beaujolais" is in violation of the international obligations of the United States, and stated that such recognition would undermine the protection accorded the distinctive name "Beaujolais," and create a new semigeneric name.

Discussion of Comments

In Notice No. 793, ATF proposed the continuance of the name "Gamay Beaujolais" on American wine labels, premised on the belief that American consumers had come to associate this term with a wine made from Pinot noir and Valdiguié ("Napa Gamay") grapes. ATF recognized that the use of this term to designate these grapes arose from an initial classification error; however, ATF reasoned that if consumer recognition of the term was based on its new secondary meaning in the United States, then the term would not mislead the American consumer if used in direct conjunction with an appellation of origin, as well as a varietal type designation. Thus, the most important issue in determining whether the regulations should continue to authorize use of the name "Gamay Beaujolais" on American wine labels was whether American consumers were aware that the term has a secondary meaning referring to wines made from Pinot noir and Valdiguié grapes.

Many of the commenters in opposition to Notice No. 793 challenged ATF's assumption that consumers understood the true varietal basis of "Gamay Beaujolais" wines. While the commenters in favor of continuing the use of "Gamay Beaujolais" stated that

there was good consumer recognition of the term, they did not provide evidence that many American wineries had voluntarily disclosed the true grape varieties in "Gamay Beaujolais" wines on the label. Without this labeling information, the fact that the designation had appeared on American wine labels for decades did not establish that consumers knew that the wines were actually made from Pinot noir or Napa Gamay grapes.

Upon careful consideration of the comments, ATF has concluded that none of the commenters were able to provide any competent and reliable consumer perception evidence showing that the average American consumer was knowledgeable enough to recognize that "Gamay Beaujolais" was a wine made from the Pinot noir and "Napa Gamay" grape varieties. In fact, some of the commenters in favor of the proposed rule (such as the American Vintners Association) actually took a contrary position on this matter, and argued that American consumers did not associate "Gamay Beaujolais" with a particular grape variety or varieties. These commenters suggested that the American consumer actually associated the designation "Gamay Beaujolais" with a style of wine making.

While the comments (of both those supporting and opposing the proposal) did not provide direct evidence of consumer understanding of the varietal significance of the term "Gamay Beaujolais," ATF believes that there is a legitimate basis for its belief that the wine industry and knowledgeable consumers associate the term with a wine produced from Pinot noir and/or Valdiguié ("Napa Gamay") grapes. It is ATF's understanding that the term "Gamay Beaujolais" is not used to designate French Beaujolais wines or other French wines made from Gamay noir grapes. While wine experts thus immediately know that the term "Gamay Beaujolais" is used to refer to a wine which is not made from Gamay grapes, it is not apparent whether the average American consumer is as knowledgeable on this issue. For example, in Jancis Robinson's *Vines, Grapes, and Wines*, (Alfred A. Knopf, New York 1986) at 227, under the listing of "Gamay Beaujolais," the true meaning of this name is explained in a forthright manner, although the author goes on to state that "these facts are not widely known among ordinary wine drinkers."

Because the comments did not shed much light on the issue of consumer perception, ATF reviewed articles in the popular press to see whether these articles provided consumers with

accurate information about the identity of "Gamay Beaujolais" wines. Many of these articles indicated that knowledgeable wine writers were aware of the varietal composition of "Gamay Beaujolais" wines. For example, an article by Gerald Boyd in the July 15, 1992 edition of the *San Francisco Chronicle* entitled "Lighten Up with Young Gamays and Pinots" states that "[l]ong thought the true grape of Beaujolais, Gamay Beaujolais is in fact a clone of Pinot Noir." Frank Priol of the *New York Times* stated as follows in an article entitled "Wine Talk" dated January 16, 1991: "Gamay beaujolais and Napa gamay are fairly popular California grapes, but neither is actually gamay; gamay beaujolais is an inferior clone of the pinot noir grape, and Napa gamay is probably a little-used grape from the South of France called valdiguié."

These examples reflect that there is a fairly widespread knowledge among knowledgeable wine writers that "Gamay Beaujolais" wines are not made from Gamay noir grapes. On the other hand, some of these articles suggested that the labeling of these wines was confusing. For example, in the March 28, 1990 edition of the *Washington Post*, in an article entitled "All-American Beaujolais," Ben Giliberti explained the true identity of the "Gamay Beaujolais" and "Napa Gamay" grapes, and then stated "Regardless of grape variety, most domestic bottlings are labeled gamay beaujolais—a confusing situation that one hopes will be rectified by labeling authorities in the near future." In an article entitled "French Beaujolais Needn't Fear that California Clone," in the July 18, 1991 edition of the *Atlanta Constitution*, writer Bruce Galphin explains that "it has been widely known for years that gamay Beaujolais is a clone (mutated form) of pinot noir" but also states that the situation is "confusing to Americans learning about wine."

Conclusion

After carefully reviewing the comments, as well as commentary by wine experts such as Jancis Robinson, and articles in the popular press such as the ones cited above, ATF has concluded that the industry and wine experts understand the term "Gamay Beaujolais" to have varietal significance when used on American wine labels, even though the term initially arose from a classification error. However, ATF has concluded that while the term has thus acquired a secondary meaning in the United States to refer to a wine made from Pinot noir and/or "Napa Gamay" grapes, the average consumer

may not understand this varietal significance of the term unless additional information is provided. Thus, ATF has concluded that the unqualified use of the term "Gamay Beaujolais" on wine labels may tend to mislead consumers as to the varietal identity of the wine.

In Notice No. 793, ATF proposed permanently to allow use of the term "Gamay Beaujolais" in conjunction with a true varietal designation—either Pinot noir or Valdiguié ("Napa Gamay"). However, there were several good points that were raised in opposition to this proposal. Several commenters suggested that ATF was merely codifying a historical error, and that erroneous varietal designations should not be allowed merely because such designations were supplemented with additional truthful information. The INAO and UIVB suggested that the juxtaposition of the term "Gamay Beaujolais" with "Pinot noir," for example, might further confuse the consumer, and mislead the consumer into believing that the wine was a blend of "Gamay Beaujolais" and Pinot noir grapes.

ATF has reevaluated its proposal in light of these comments. While ATF still believes that the name "Gamay Beaujolais" has consumer recognition in the United States, we also recognize that it is not the correct name for these two grape varieties, and that the average consumer should not be expected to have technical knowledge about grape classification issues in order to understand a wine label.

Since the establishment of the Winegrape Varietal Names Advisory Committee in 1982, it has been ATF's goal to eliminate the use of incorrect grape variety names in the labeling of American wines, even where those names have been used on a longstanding basis in the United States. The final rule on varietal names eliminated the usage of many names that had been used in the United States for a long time, where those names did not accurately reflect the recognized names of the grape varieties in question. See T.D. ATF-370 (61 FR 522). This same logic dictates that use of the name "Gamay Beaujolais" should be phased out in the United States.

Thus, ATF has decided that the regulations should not provide permanent recognition of the labeling designation "Gamay Beaujolais." The original classification and naming errors made with respect to the "Gamay Beaujolais" (Pinot noir) and "Napa Gamay" (Valdiguié) grapes should not be compounded by allowing the name "Gamay Beaujolais" to be used indefinitely to designate wines made

from two separate grape varieties, neither of which is a true Gamay grape. The purpose of the rulemaking project on varietal names was to rectify the errors made in the past with respect to classification of American wine grape varieties, and to ensure that American consumers were not misled as to the true identity of American varietal wines. This is all the more important since varietal names have assumed increasing importance in the marketing of wines.

Accordingly, ATF has decided that it will terminate recognition of the labeling designation "Gamay Beaujolais" within 10 years. During this phase-out period, interim labeling requirements will ensure that consumers are adequately informed as to the varietal content of the wine. ATF has concluded that it is necessary to allow a period of time in which wineries can continue to use the labeling designation "Gamay Beaujolais," as long as this designation is qualified in a manner that will allow consumers to be educated as to what the varietal significance of the term really is.

Interim Labeling Requirements

This final rule provides that ATF will temporarily recognize the name "Gamay Beaujolais" as a type designation of varietal significance. This means that the name has varietal significance, but it does not fit the requirements for a varietal designation. In this case, the name is used to designate a wine where not less than 75 percent of the volume of the wine is derived from Pinot noir grapes, Valdiguié ("Napa Gamay") grapes, or a combination of both.

As previously explained, § 4.28, relating to type designations of varietal significance, did not exist in 1994, at the time Notice No. 793 was published. Upon consideration of the comments received in response to this notice and the regulatory structure adopted as a result of the varietal name rulemaking, ATF has determined that the type of wine described as Gamay Beaujolais is a better fit in § 4.28, rather than as a separate class and type designation in § 4.34.

ATF will allow a period of 10 years from the issuance of this final rule for wineries to phase out the use of the term "Gamay Beaujolais." To the extent that consumers have formed a loyalty to or preference for the wine that they know as "Gamay Beaujolais," this transition period will allow them time to learn more information about the varietal content of the wine. It will also allow wineries and grape growers time to make any necessary changes in their planting and marketing plans.

Pursuant to the existing regulations, an appellation of origin must also appear in direct conjunction with any type designation of varietal significance. This will ensure that consumers are not misled as to the origin of the wine. However, ATF also believes that some further information on the label is necessary in order to ensure that the consumer is not misled as to the varietal content of the wine. These requirements will be discussed in further detail below.

Interim Definition of "Gamay Beaujolais"

In Notice No. 793, ATF proposed that the designation "Gamay Beaujolais" could only be used where the wine met the requirements for use of *either* the Pinot noir or Valdiguié ("Napa Gamay") varietal designation. In that case, the designation would have to be qualified by the use of a single varietal designation, signifying that 75 percent of the wine was derived from either Pinot noir or Valdiguié ("Napa Gamay") grapes. However, the comments received from American wholesalers, growers of Pinot noir and Valdiguié grapes, and American wineries who produced "Gamay Beaujolais" wines were overwhelmingly opposed to this proposal. These comments pointed out that it had been ATF's longstanding policy to allow the Pinot noir and Valdiguié grape varieties to be combined to make up the regulatory 75 percent requirement. Many comments stressed that it was important for wineries to have the flexibility to adjust percentages in order to arrive at the most desirable blend. For example, the California Association of Winegrape Growers stated that restricting the term to only one of these grape varieties would "unduly restrict(s) the winemakers ability to creatively blend to consumer taste."

Since the use of the term "Gamay Beaujolais" is being phased out over the next 10 years, and since the comments establish that the term is well recognized in the wine industry as referring to wines made from a combination of Pinot noir and Valdiguié ("Napa Gamay") grapes, ATF has decided to define the term in a way that incorporates the *status quo* over the past several decades. Thus, ATF is defining the term "Gamay Beaujolais" to mean an American wine which derives at least 75 percent of its volume from Pinot noir grapes, Valdiguié grapes, or a combination of both. However, since the term will refer to a blend of two separate unrelated grape varieties, ATF believes that it is all the more important to ensure that there is sufficient

information on the brand label, in direct conjunction with the designation "Gamay Beaujolais" to ensure that consumers are not misled as to the varietal content of the wine. These requirements are discussed below.

It should be noted that there were a few comments questioning ATF's exclusion of wines made with true Gamay noir grapes from the definition of "Gamay Beaujolais." The evidence clearly indicates that American "Gamay Beaujolais" wines have been made from grapes that were not true Gamay grapes. In T.D. ATF-370, ATF noted that it was listing the true Gamay grape as "Gamay noir," in order to distinguish it from other wines which were labeled "Gamay" in the past. 61 FR 532. The true Gamay grape is a relative newcomer to the United States, and there is no reason to create any confusion between the wine known as "Gamay Beaujolais" and wines made from the true "Gamay noir" grape. Accordingly, wineries producing wines from the true Gamay noir grape and meeting the applicable percentage requirements for use of a single varietal type designation, may designate their wines as "Gamay noir" but not as "Gamay Beaujolais."

Finally, wineries producing wine that meets the requirements for a single varietal designation of either Pinot noir or Valdiguié ("Napa Gamay") may of course choose to use these varietal designations in lieu of the type designation "Gamay Beaujolais." However, in accordance with the regulations at § 4.23, the name "Napa Gamay" will no longer be accepted for wines bottled on or after January 1, 1999; instead, the varietal name "Valdiguié" must be used to designate these wines.

Interim Labeling Statements

The final rule will allow the use of the "Gamay Beaujolais" designation where there appears on the brand label, in direct conjunction therewith, the names of the grape variety or grape varieties used to satisfy the regulatory definition of "Gamay Beaujolais" (*i.e.*, Pinot noir and/or Valdiguié). These varietal names must appear on a separate line from the "Gamay Beaujolais" designation, and must be separated from "Gamay Beaujolais" by the required appellation of origin. Where two varietal names are listed, they shall appear on the same line, in order of predominance.

The appellation of origin shall appear either on a separate line between the name "Gamay Beaujolais" and the grape variety name(s), or on the same line as the grape variety name(s) in a manner that qualifies the grape variety name(s). Furthermore, the following statement shall also appear on the brand or back

label: "Gamay Beaujolais is made from at least 75 percent Pinot noir and/or Valdiguié grapes."

In Notice No. 793, ATF proposed a rule that would allow the name "Gamay Beaujolais" only where the wine met the standards for use of either the Pinot noir varietal designation, or the Valdiguié ("Napa Gamay") varietal designation, and where the type designation "Pinot noir" or Valdiguié ("Napa Gamay") appeared in direct conjunction with the designation "Gamay Beaujolais." As previously discussed, ATF has now concluded that during the 10-year phase-out period, it is reasonable to allow the existing industry practice of blending Pinot noir and "Napa Gamay" grapes to make up the 75 percent requirement for use of the "Gamay Beaujolais" designation. This is in accordance with the longstanding trade practice and industry understanding of the term "Gamay Beaujolais," as well as the longstanding policy of ATF and its predecessor agency.

However, since the term "Gamay Beaujolais" is now being defined to include a blend of two separate grape varieties, ATF believes that it is necessary to require more than just the appearance of one or two grape varieties on the brand label, in direct conjunction with the designation "Gamay Beaujolais." The INAO and UIVB suggested that the use of two names such as "Gamay Beaujolais" and "Pinot noir" on a brand label might confuse consumers into believing that these two names represented separate grape varieties which had gone into the wine. ATF believes that this comment has merit. In other words, ATF is concerned that the appearance of the designations "Gamay Beaujolais," "Pinot noir," and "Valdiguié" together on a brand label might confuse some consumers, and tend to create a misleading impression that these three names each represented grape varieties that had been used in the production of the wine.

Thus, the final rule will require that the varietal designations Pinot noir and/or Valdiguié appear on the brand label in direct conjunction with the designation "Gamay Beaujolais," but on a separate line from "Gamay Beaujolais," and separated from "Gamay Beaujolais" by the required appellation of origin. The appellation of origin shall appear either on a separate line between the name "Gamay Beaujolais" and the grape variety name(s), or on the same line as the grape variety name(s) in a manner that qualifies the grape variety name(s). This will ensure that the consumer is not misled into believing that Gamay Beaujolais represents just

one of two or three grape varieties used in producing the wine.

Where the wine is made from both Pinot noir and Valdiguié grapes, the two grape varieties shall appear on the same line, in order of predominance. Below are four examples of type designations on brand labels that will be allowed under the requirements of the final rule:

GAMAY BEAUJOLAIS, 1992 CALIFORNIA, PINOT NOIR/VALDIGUIÉ

GAMAY BEAUJOLAIS, NAPA VALLEY VALDIGUIÉ

1994 GAMAY BEAUJOLAIS, SONOMA COUNTY PINOT NOIR

GAMAY BEAUJOLAIS, CALIFORNIA, VALDIGUIÉ & PINOT NOIR

This requirement should leave no room for confusion on the part of the consumer as to the varietal content of the wine.

Additional Labeling Statement

Notwithstanding the above, ATF believes that because "Gamay Beaujolais" wines are in something of a unique category, the consumer should be provided with more specific information as to the meaning of this designation. The vast majority of comments received in response to Notice No. 794 were in opposition to any requirement that grape variety percentages be listed on labels. These commenters cited the need for flexibility in the blending of grapes. ATF recognizes that if the regulations require wineries to list the percentage of each grape variety used in the blend, wineries will have to obtain new labels, as well as new certificates of label approval, for each different blend of "Gamay Beaujolais" wine.

In response to these comments, ATF is not requiring wineries to put grape percentages on the brand label, as they would be required to do if the wine were labeled with more than one grape variety under section 4.23(d). ATF recognizes that the Gamay Beaujolais designation is not a multiple varietal designation, but is instead a type designation of varietal significance, which is indicative of a certain varietal content. The regulations will define what that varietal content is, and knowledgeable industry members and consumers are already aware of these requirements.

However, in order to ensure that consumers are more specifically informed as to the varietal significance of the term "Gamay Beaujolais," the final rule will require the following statement to appear on the brand or back label: "Gamay Beaujolais is made from at least 75 percent Pinot noir and/

or Valdiguié grapes.” ATF believes that this statement adequately informs the consumer as to the traditional meaning of the term “Gamay Beaujolais” as used on American wine labels for the past several decades. Wineries may use this statement without having to receive new certificates of label approval each time the percentages of grape varieties in their blends change.

ATF believes that these new requirements will ensure that during the period of the phase-out, consumers will be adequately informed about the varietal content of the wine. Furthermore, “Gamay Beaujolais” wines will continue to be labeled with an appellation of origin to ensure that consumers are adequately informed as to the origin of the grapes. ATF believes that knowledgeable consumers are already on notice that “Gamay Beaujolais” wines are not made from the “Gamay noir” grape. The interim labeling requirements will, however, help to educate all consumers as to the meaning of the term “Gamay Beaujolais,” and ensure that consumers have sufficient information as to what that term means.

Length of Phase-Out Period

Since ATF did not specifically propose the option of phasing out use of the name “Gamay Beaujolais” in Notice No. 793, we did not solicit comments on the issue of the appropriate length of a phase-out period. However, when ATF first proposed to phase out use of this term in 1986, many wineries and grape growers suggested that this proposal would impose an undue economic burden on growers of Napa Gamay grapes. It was suggested that American consumers had come to know the term “Gamay Beaujolais” as referring to a particular type of wine, and that the market for this wine would be severely impacted if it were not labeled under the “Gamay Beaujolais” designation.

ATF’s statutory mandate under the FAA Act is to regulate the use of terms on wine labels so as to avoid misleading the consumer. ATF recognizes that wineries who produce “Gamay Beaujolais” wines may have to make some marketing and labeling changes in connection with the phasing out of this term. ATF also recognizes that some wineries may have relied upon ATF’s previous recognition of this term in making economic decisions regarding the planting of grapes and the marketing of wines. Many of the commenters to Notice No. 581 suggested that a 5-year phase-out period would impose an undue economic burden on growers and wineries, due to the necessary adjustments with respect to planting

and marketing decisions. Although a phase-out was not even proposed in Notice No. 793, ATF received one comment from a grape grower discussing the substantial investment in “Napa Gamay” grapes, and the cost and time that is involved in replanting vineyards.

Accordingly, ATF has decided to allow the use of the term “Gamay Beaujolais” on wine labels for 10 years from the date of publication of this final rule. On the one hand, wineries and grape growers have been on notice since the formation of the Advisory Committee in 1982 that the continued use of the name “Gamay Beaujolais” was in doubt. Thus, even though ATF did not specifically propose a phase-out in Notice No. 793, that issue has certainly been aired sufficiently to put all interested parties on notice that the future of the designation “Gamay Beaujolais” was uncertain.

On the other hand, since ATF proposed to continue to allow the use of this name in 1994, many domestic wineries may have relied upon this proposal in deciding to continue production of this wine, as have grape growers in the cultivation of the grapes used to make this wine. ATF wants to ensure that any such wineries and grape growers are given sufficient time to make any necessary changes required by this final rule. Many comments to the 1986 notice expressed concern that the market for “Napa Gamay” grapes would be severely affected by the elimination of the “Gamay Beaujolais” designation. ATF believes a reasonable phase-out period is necessary to avoid these economic consequences.

Accordingly, American wineries may continue to use this term for a period of ten years, subject to the requirements previously discussed, in order to afford them adequate time to make any necessary changes in the marketing of their wines and the planting of their vineyards. ATF believes that this interim position will ensure that consumers who read the label will not be misled as to the true varietal composition or geographic origin of the wines in question. In fact, the interim rule will ensure that American consumers receive a great deal of information as to the meaning of the term “Gamay Beaujolais” on American wine labels. By the end of the ten-year period, consumers who enjoy “Gamay Beaujolais” wines will have sufficient information about the product that they will be able to make an educated choice about the product once the labeling terminology changes.

Effective Date

The regulatory definition of “Gamay Beaujolais” as a type designation of varietal significance, which essentially codifies the past agency practice on this issue, will take effect May 7, 1997. Since this definition does not involve any change in past administrative practice, ATF does not believe that the new definition, in and of itself, will necessitate any labeling changes.

However, the new requirements imposed by the final rule with respect to additional information on labels will necessitate labeling changes. These requirements are effective for wines bottled on or after January 1, 1999. This will provide wineries with ample time to make any necessary changes to the labeling of “Gamay Beaujolais” wines. Furthermore, this effective date will coincide with the date on which the name “Napa Gamay” will no longer be authorized on wine labels. Pursuant to T.D. ATF-370, the name “Napa Gamay” is listed as a synonym for the prime name “Valdiguié,” however, the name “Napa Gamay” may only be used for wines bottled prior to January 1, 1999. Since this final rule will require wineries to make changes to existing labels, ATF believes that it would be unduly burdensome to require industry members to change their labels twice. Accordingly, the final rule will allow wineries to begin compliance with the interim labeling requirements for “Gamay Beaujolais” at the same time that the term “Napa Gamay” must be phased out.

Geographic Name Issues

ATF would like to clarify that it does not agree with those commenters who suggested that use of the “Gamay Beaujolais” designation is misleading as to the origin of the wine, or that ATF’s prior or interim policy with respect to this name is in violation of the international obligations of the United States.

Two separate issues were raised with respect to the incorporation of the geographic name “Beaujolais” into the designation “Gamay Beaujolais.” On the one hand, as previously noted, commenters opposed to the use of “Gamay Beaujolais” and commenters in favor of the use of “Gamay Beaujolais” have separately suggested that recognition of this term would constitute the authorization of a new semigeneric designation for American wines. Commenters opposed to use of the term “Gamay Beaujolais” have also suggested that use of the term is in violation of the FAA Act and its implementing regulations, because the

United States has already recognized the term "Beaujolais" as a nongeneric distinctive designation for wines, and thus the term "Beaujolais" may not appear anywhere on the label of a wine originating anywhere outside of Beaujolais, France. These issues will be addressed separately.

Regulations

ATF regulations at 27 CFR 4.24 provide several different categories of names of geographic significance. Section 4.24(a) provides that certain names, such as Vermouth and Sake, are generic names which originally had geographic significance, but which are also designations of a class or type of wine. Such names may be used to label wines coming from any geographic area.

Section § 4.24(b) also establishes semigeneric names of geographic significance which are also designations of a class or type of wine. Semigeneric designations may be used to designate wines of an origin other than that indicated by the name only if there appears in direct conjunction an appropriate appellation of origin disclosing the true place of origin of the wine, and if the wine so designated conforms to the standard of identity, if any, for such wine contained in the regulations, or to the trade understanding of such class or type. Examples of semigeneric names which are also type designations are burgundy, champagne, and sherry.

Finally, § 4.24(c) provides that if a name of geographic significance has not been found by the Director to be generic or semigeneric, it may be used only to designate wines of the origin indicated by such name. Furthermore, if the Director finds that such a name is known to the consumer and to the trade as the designation of a specific wine of a particular place or region, distinguishable from all other wines, then the name shall be deemed a distinctive designation of a wine. The names "American" and "French" are nongeneric names that are not distinctive designations of specific grape wines. The names "Bordeaux Blanc" and "Medoc" are nongeneric names that are also distinctive designations of specific grape wines.

In 1990, ATF issued a new part 12 in the regulations, listing examples of foreign nongeneric names of geographic significance. In keeping with the policy of the past several decades, the name "Beaujolais" was recognized as a foreign nongeneric name of geographic significance which has also been recognized as a distinctive designation of a specific grape wine. See 27 CFR 12.31(b).

Semigeneric Name Issue

The name "Beaujolais" has long been recognized by the United States as a nongeneric name that is also a distinctive designation of a specific grape wine. This means that the name "Beaujolais," standing alone, can only be used to designate a wine that is produced in Beaujolais, France. However, certain commenters have suggested that "Gamay Beaujolais" has become a semigeneric name that represents that a wine is made using the same production methods that are used in the production of Beaujolais wines. The suggestion has thus been made that ATF should authorize "Gamay Beaujolais" as a semigeneric name.

ATF has never sanctioned the use of the name "Gamay Beaujolais" as a semigeneric designation. The geographic designation "Beaujolais," standing on its own, is a distinctive designation that has been recognized by American regulations for decades. There is no evidence that this term, standing alone, has lost its meaning as a distinctive, nongeneric geographic designation. To the extent that many comments in opposition to recognition of the name "Gamay Beaujolais" are based on the premise that the name would constitute a new semigeneric designation, ATF has concluded that such criticism is unfounded. The incorporation of a geographic name *as part of* a varietal designation, or *as part of* a designation of varietal significance, is completely different from the recognition of a geographical name in and of itself as a type of wine which has lost its geographical significance. If ATF decided to allow the designation "Beaujolais" to appear by itself on labels of wines originating outside of Beaujolais, France, then that would be a change in the status of the designation "Beaujolais" as a nongeneric, distinctive designation of geographic significance. However, the incorporation of the name "Beaujolais" as part of a varietal designation, or as part of a designation of varietal significance, does not mean that a new semigeneric designation has been created. This final rule in no way changes the recognition accorded the designation "Beaujolais" as a nongeneric name under § 4.24(c).

Use of Geographic Names in Varietal Designations

Many comments to Notice No. 793 suggested that the incorporation of geographic names in varietal designations is somehow in violation of the regulations governing the use of such geographic names on wine labels.

ATF does not agree with these comments.

Many European geographic terms were originally incorporated into American varietal names for the purpose of conveying to the American consumer that these were the same grape varieties that were grown in the European geographic area referenced by the name. While our historical records are not clear on this issue, it seems likely that the distinctive designation "Beaujolais" was allowed as part of the original "Gamay Beaujolais" designation only as a descriptive term similar to "French Colombard" or "Johannisberg Riesling." In other words, it was meant to convey one meaning—that this was the same "Gamay" grape as was grown in Beaujolais, just as the "French Colombard" was the same Colombard grape grown in France, and the "Johannisberg Riesling" was the same Riesling grape grown in Johannisberg.

It should be noted that ATF has never taken the position that the incorporation of a geographic name in a varietal name is contrary to the regulations in § 4.24 which govern the use of names of geographic significance. For example, § 4.24(c)(2) specifically recognizes that the word "French" is a nongeneric name; it cannot be used on a wine label to designate a wine that originates outside of France. However, "French Colombard" is different from the single word "French," in the same way that "Gamay Beaujolais" is different from the single word "Beaujolais." Thus, ATF does not agree with those commenters who suggested that ATF would be violating its own regulations by authorizing the use of a name of varietal significance that incorporated the name of a distinctive designation. The incorporation of a geographic name as part of a varietal name or a designation of varietal significance is different from the use of that same geographical name standing alone on a wine label.

When ATF first proposed the establishment of Part 12, to list examples of foreign nongeneric names of geographic significance, it took the position that certain foreign denominations of origin that were identical to or similar to American grape varietal designations should not be published as examples of nongeneric names. When ATF promulgated these regulations in T.D. ATF-296, however, we concluded as follows:

After consideration of the comments, ATF agrees that names of bonafide geographically demarcated areas or names which are used to designate a wine product from a particular country should be recognized as nongeneric

even if they are similar or identical to varietal names. In this regard, ATF believes that any potential for consumer confusion concerning the origin of the wine is obviated by the fact that the wine labeling regulations provide that the names of grape varieties may be used as a type designation of a wine only if the wine is also labeled with an appellation of origin. 27 CFR 4.23a. In addition, any questions concerning the potential for consumer confusion as to the identity of the wine that may arise when a foreign nongeneric name is similar or identical to a varietal name will be resolved by ATF on a case-by-case basis.

55 FR at 17966

This same issue was presented when various foreign producers and governments objected to the use of foreign geographical terms in American grape varietal names. In T.D. ATF-370, ATF specifically rejected any blanket prohibition of foreign geographical terms in grape variety names, stating that it had already announced in Notice No. 749 that "there is no reason to deny use of a grape variety name to American winemakers simply because that name bears a resemblance to a foreign name of geographic significance." 61 FR at 534. ATF noted that the requirement to use an appellation of origin in direct conjunction with a grape variety name would prevent confusion between an American varietal wine and a wine labeled with a foreign appellation of origin. Finally, ATF restated its position that "any questions concerning the potential for consumer confusion as to the identity of wine which may arise when a foreign geographic term is similar or identical to a varietal name would be resolved by ATF on a case-by-case basis." 61 FR at 534.

In the final rule on grape variety names, ATF announced that it was phasing out use of the term "Johannisberg Riesling," since that grape variety was known by two other names which did not incorporate geographical references—"Riesling" and "White Riesling," and these names were more correct than "Johannisberg Riesling." 61 FR at 530. On the other hand, since the name French Colombard had become well known to the American consumer, it was retained as a synonym for the prime name "Colombard." ATF did not believe that this name would mislead consumers as to the origin of the wine, as long as an appellation of origin appeared in direct conjunction with the name, in compliance with the requirements of § 4.34(b).

When ATF's predecessor agency originally allowed American wineries to use the name "Gamay Beaujolais" on labels, the decision was not made with the intention to thereby create a new

semigeneric designation or to imply that the wine made from these grapes was somehow the same as wine coming from Beaujolais, France. Furthermore, since an appellation of origin has always been required to appear in direct conjunction with the varietal name, we do not believe that consumers have been misled about the origin of the wine.

ATF does not agree that it is precluded by the FAA Act or its implementing regulations from approving the use of a grape varietal name or a type designation of varietal significance which incorporates a geographic reference, as long as that name is an accurate designation for the grape variety, or is a recognized name of varietal significance, and is known to the consumer. However, we agree that varietal names and type designations of varietal significance which incorporate geographic terms must be evaluated on a case-by-case basis to determine whether there is a potential for consumer confusion. In the case at hand, since there is no evidence that French wines are labeled as "Gamay Beaujolais," and since it appears that American consumers associate this name with American wines, ATF does not believe that the name causes confusion as to the geographic origin of the wine.

International Issues

It should be noted that while ATF has decided to phase out use of the name "Gamay Beaujolais," we do not believe that either our past policy on this issue or our interim policy during the "phase-out" period is in violation of the international obligations of the United States.

The provisions in TRIPS on geographical indications do afford certain protections for names of wines and distilled spirits in Articles 22 and 23. However, those protections are subject to the provisions in Article 24 that address and sanction the continued use of names in existence on or after the effective dates of the TRIPS provisions. Article 24(4) states as follows:

Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (a) for at least ten years preceding the date of adoption of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations or (b) in good faith preceding that date.

Under this paragraph, an industry member that has been using the

designation "Gamay Beaujolais" under the prescribed conditions is entitled to continue that use on the "same or related" wines after the effective date contained in the TRIPS provision. Additionally, Article 24(6) provides as follows:

Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this section shall require a Member to apply its provisions in respect of a geographical indication of any other member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the Agreement Establishing the MTO.

This paragraph is not restricted to the continued use by a particular person or entity. Thus, under the provisions of the first sentence, since the designation "Gamay Beaujolais" is the term customary in the common language of the United States to describe the wine at issue, ATF's interim maintenance of the *status quo* with respect to the definition of "Gamay Beaujolais" wines does not violate TRIPS. It is also arguable that the second sentence in Article 24(6), which allows the continued use of grape variety names existing as of January 1, 1995, applies to "Gamay Beaujolais" since ATF has determined that this name is a type designation of varietal significance. Furthermore, the final rule does not change the definition of "Gamay Beaujolais" which has been applied by the agency since well before January 1, 1995.

Finally, even if the general application of Article 24(6) were disregarded for a moment, the proposal does not contradict the provision of Article 24(3) which provides that a Member shall not diminish the protection of geographical indications that existed in that member immediately prior to the date of entry into force of the agreement establishing the World Trade Organization. ATF's maintenance of the *status quo* constitutes an interim continuance of the existing practices governing the production of the wine bearing the designation Gamay Beaujolais. Thus, no protection has been diminished. Accordingly, ATF's maintenance of the status quo with respect to Gamay Beaujolais is consistent with the obligations of the United States under the TRIPS provisions.

The Wine Accord

Several commenters suggested that the continued use of the designation "Gamay Beaujolais" is contrary to the commitment in Item III of the United States-European Economic Community Wine Accord of 1983. In relevant part, that item states:

The EEC also notes with satisfaction the willingness of the U.S. to work within the regulatory framework of 27 CFR § 4.24(c)(3) to prevent erosion of non-generic designations of geographic significance indicating a wine-growing area in the EEC.

The United States fulfilled the letter and spirit of this commitment in the promulgation of 27 CFR Part 12—Foreign Nongeneric Names of Geographic Significance Used in the Designation of Wines in T.D. ATF-296, 55 FR 17967, April 30, 1990. Furthermore, at the time the commitment was made in the Wine Accord of 1983, the use of the designation "Gamay Beaujolais" on wines originating from other than the Beaujolais region of France was clearly established. Finally, even if the name "Gamay Beaujolais" were considered to be a nongeneric designation of geographic significance indicating a wine-growing area in the European Union, nothing in ATF's policy with respect to this designation erodes the Beaujolais appellation of origin in France since ATF's actions have merely maintained the *status quo* use of this designation, with further restrictions, pending the termination of the 10-year phase-out period. Thus, ATF's actions have not violated the commitments of the Wine Accord of 1983.

Miscellaneous Labeling Issues

Several commenters suggested that American producers of Gamay Beaujolais are deliberately trying to create an association between their wines and French Beaujolais wines by using the descriptive term "Nouveau" to modify the designation "Gamay Beaujolais." The term "Beaujolais Nouveau" is used to designate the Beaujolais wine first released from each year's vintage, prior to any aging. French law prohibits the release of Beaujolais Nouveau wine until the third Thursday in November of each year, and the release of these wines on the third Thursday in November is an occasion which receives much publicity and attention throughout the world.

Commenters such as INAO and UIVB suggested that the promotion of American "Gamay Beaujolais Nouveau" wines, often released on the same day in November as the French Beaujolais Nouveau wines, is evidence of an

attempt by American wineries to create a false association with true Beaujolais wines. A comment from Georges Duboeuf, who exports French Beaujolais wines to the American market, made a similar argument with respect to the use of the term "Nouveau" to describe American Gamay Beaujolais wines. Mr. Duboeuf suggested that the popularity of French Beaujolais Nouveau wines had been skyrocketing in the United States, and that American wineries were trying to "perpetrate [a] hoax on the American consumer to improve their sales" of Gamay Beaujolais wines by appropriating the term "Nouveau" to describe their products. Mr. Duboeuf stated that "[w]ine produced in California can never be Beaujolais Nouveau though they may try to appropriate the name."

ATF believes that these comments have raised valid issues regarding individual labels approved by ATF for "Gamay Beaujolais" wines. For example, some wineries have labeling statements that compare their wines to Beaujolais wines from France. Other wines are labeled as "Gamay Beaujolais Nouveau," in an apparent attempt to create a comparison to "Beaujolais Nouveau" wines.

In general, ATF allows additional information on wine labels that is truthful, accurate and specific. Thus, it is not misleading for a winery to truthfully explain the type of production method used to make the wine at issue. Nor is it generally misleading to use a descriptive term such as "Nouveau" on a wine label. However, ATF will examine each application for label approval for "Gamay Beaujolais" wine received in the next 10 years to ensure that the label, taken as a whole, does not create the misleading impression that the wine is somehow the same as or similar to Beaujolais or "Beaujolais Nouveau" wines.

Litigation

It should be noted that on February 21, 1996, the INAO and UIVB filed a complaint in the United States District Court for the District of Columbia. The two plaintiffs are organizations chartered under French law, and they allege that ATF's approval of domestic wine labels bearing the designation "Gamay Beaujolais" is contrary to the FAA Act and its implementing regulations. Plaintiffs also argue that ATF's approval of this term violates the international obligations of the United States. It is ATF's belief that the issues raised by the plaintiffs have also been raised in the comments submitted in this rulemaking proceeding, and are

comprehensively addressed in this final rule.

Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule will allow domestic wineries to continue to use the labeling designation "Gamay Beaujolais" for a period of 10 years, although additional information on labels will be required. ATF believes that this phase-out period provides ample time for affected wineries to make any necessary labeling and marketing changes, especially in view of the fact that ATF first proposed in 1986 to phase out use of the name "Gamay Beaujolais." Thus, by the time that the phase-out period will have expired, American wineries will have had over 20 years from the first phase-out proposal to make any necessary adjustments to the labeling and marketing of their wines. Furthermore, even after use of the name is phased out, wineries will still be able to produce the same wine, using the Pinot noir and/or Valdiguié name(s). By that time, consumers will have learned (if they do not already know) that the name "Gamay Beaujolais" has been used to designate a wine made from Pinot noir and Valdiguié grapes. Presumably, consumer loyalty to this product will continue even after it is marketed under a different name. Thus, the final rule will not have a significant economic impact on a substantial number of small entities.

Accordingly, a regulatory flexibility analysis is not required because 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 reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this final regulation has been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1512-0482. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Executive Order 12866

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

Drafting Information

The principal author of this document is Thomas Busey, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, consumer protection, Customs duties and inspections, Imports, Labeling, Packaging and containers, Wine.

Authority and Issuance

Accordingly, 27 CFR Part 4, Labeling and Advertising of Wine, is amended as follows:

Paragraph 1. The authority citation for Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.28 is amended by adding a new paragraph (e) to read as follows:

§ 4.28 Type designations of varietal significance.

* * * * *

(e)(1) *Gamay Beaujolais*. An American wine which derives at least 75 percent of its volume from Pinot noir grapes, Valdiguié grapes, or a combination of both.

(2) For wines bottled on or after January 1, 1999, and prior to [10 years from date of publication], the name “Gamay Beaujolais” may be used as a type designation only if there appears in direct conjunction therewith, but on a separate line and separated by the required appellation of origin, the name(s) of the grape variety or varieties used to satisfy the requirements of paragraph (e)(1) of this section. Where two varietal names are listed, they shall appear on the same line, in order of predominance. The appellation of origin shall appear either on a separate line between the name “Gamay Beaujolais” and the grape variety name(s) or on the same line as the grape variety name(s) in a manner that qualifies the grape variety name(s). The following statement shall also appear on the brand or back label: “Gamay Beaujolais is made from at least 75 percent Pinot noir and/or Valdiguié grapes.”

(3) The designation “Gamay Beaujolais” may not be used on labels of American wines bottled on or after April 9, 2007.

Signed: February 21, 1997.

John W. Magaw,
Director.

Approved:

Dennis M. O'Connell,
Acting Deputy Assistant Secretary
(Regulatory, Tariff & Trade Enforcement).
[FR Doc. 97-8808 Filed 4-4-97; 8:45 am]
BILLING CODE 4810-31-U

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 915**

[SPATS No. IA-009-FOR]

Iowa Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Iowa regulatory program (hereinafter referred to as the “Iowa program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Iowa proposed revisions to its rules pertaining to the prompt repair or compensation for material damage caused by subsidence to non-commercial buildings and occupied residential dwellings and related structures and the replacement of drinking, domestic and residential water supplies that have been adversely impacted by underground coal mining operations. The amendment is intended to revise the Iowa program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: April 7, 1997.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Regulatory Program Specialist, Office of Surface Mining, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002. Telephone: (618) 463-6460.

SUPPLEMENTARY INFORMATION:

- I. Background on the Iowa Program
- II. Submission of the Program Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background on the Iowa Program

On January 21, 1981, the Secretary of Interior conditionally approved the Iowa program, effective April 10, 1981. General background information on the

Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Iowa program can be found in the January 21, 1981, **Federal Register** (46 FR 5885). Subsequent actions concerning Iowa's program and program amendments can be found at 30 CFR 915.10, 915.15, and 915.16.

II. Submission of the Proposed Amendment

By letter dated December 4, 1996 (Administrative Record No. IA-424), and pursuant to SMCRA, Iowa submitted a proposed amendment. The amendment was in response to a May 20, 1996, letter (Administrative Record No. IA-420) that OSM sent to the State in accordance with 30 CFR 732.17(c).

OSM announced receipt of the proposed amendment in the December 26, 1996, **Federal Register** (61 FR 67967), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on January 27, 1997.

During its review of the amendment, OSM identified concerns relating to Iowa Administrative Code (IAC) 40.4(10), Definitions for “material damage” and “occupied residential dwelling and structures related thereto”; IAC 40.38(3)(a), Pre-subsidence survey; IAC 40.38(3)(b), Subsidence control plan; IAC 40.64(7), Repair of damage; and IAC 40.64(8), Drinking, domestic, or residential water supply. OSM notified Iowa of these concerns by telephone facsimile (fax) on January 10, 1997 (Administrative Record No. IA-431), and by telephone on February 20, 1997 (Administrative Record No. IA-434).

By letters dated February 3 and 24, 1997 (Administrative Record Nos. IA-430 and IA-433, respectively), Iowa responded to OSM's concerns by submitting additional explanatory information and/or revisions to its proposed program amendment.

Iowa proposed additional revisions to IAC 40.4(10), Definitions for “material damage” and “occupied residential dwelling and structures related thereto”; IAC 40.38(3)(a), Pre-subsidence survey; IAC 40.38(3)(b), Subsidence control plan; IAC 40.64(7), Repair of damage; and IAC 40.64(8), Drinking, regulation, IAC 40.64(9), pertaining to subsidence control. These additional revisions concerned the correction of citation references, cross-references, and typographical errors. Therefore, the public comment period was not reopened.