

the limit under paragraph (g)(2)(i) of this section is unavailable to the fast-pay shareholders.

(B) *Benefited shareholders.* For 1998, the benefited shareholders have taxable income attributable to the fast-pay arrangement of \$9,353 (\$9.35 per \$100 invested) under the recharacterization of Notice 97-21, and taxable income of \$9,426 (\$9.43 per share of benefited stock) under the recharacterization of paragraph (c) of this section. Thus, under paragraph (g)(2)(i) of this section, a benefited shareholder may elect to limit its taxable income attributable to the fast-pay arrangement to \$9.35 for each share of benefited stock. Any amount an electing shareholder excludes from taxable income (\$0.08 per share of benefited stock) must later be included as an adjustment. (If all benefited shareholders elect the limit, then as a class the later adjustment to taxable income is \$73.)

Example 2. REIT holds debt issued by a benefited shareholder. (i) *Facts.* The facts are the same as in Example 1 of this paragraph (g)(2) except that corporation Z holds 800 shares (80 percent) of the benefited stock, and Z, instead of a third party, issues the mortgage note acquired by Y.

(ii) *Recharacterization under Notice 97-21.* Because Y holds a debt instrument issued by Z, the fast-pay arrangement is recharacterized under Notice 97-21 as an arrangement in which Z issued one or more instruments directly to the fast-pay shareholders and the other benefited shareholders. Consistent with this recharacterization, Z is treated as issuing a debt instrument to the fast-pay shareholders for \$100,000. The debt instrument provides for five annual payments of \$17,000 and an additional payment of \$50,000 in year five. Thus, the debt instrument's yield to maturity is 8.57 percent per annum, compounded annually. Z is also treated as issuing a debt instrument to the other benefited shareholders for \$20,000 (200 shares multiplied by \$100, or 20 percent of the \$100,000 paid to Y by the benefited shareholders as a class). This debt instrument provides for five annual payments of \$200 and an additional payment of \$30,000 in year five. The debt instrument's yield to maturity is 9.30 percent per annum, compounded annually. For 1998, Z's interest expense is \$10,435 (\$8,574 attributable to the debt instruments held by the fast-pay shareholders, and \$1,861 attributable to the debt instruments held by the other benefited shareholders).

(iii) *Recharacterization under this section.* Assume the financing instruments are debt instruments. Under the recharacterization rules of paragraph (c) of this section, for 1998, Z has dividend income of \$14,400 (800 shares multiplied by \$18, or 80 percent of \$18,000), and total interest expense of \$24,859 (\$18,000 of interest accrued on the note held by Y, and \$6,859 of interest accrued on the financing instruments).

(iv) *Limit on taxable income under this paragraph (g)(2).* For 1998, Z has a taxable loss attributable to the fast-pay arrangement of \$10,435 under the recharacterization of Notice 97-21, and a taxable loss of \$10,459 (\$14,400 of dividends, minus \$24,859 of total interest expense) under the

recharacterization of paragraph (c) of this section. Thus, for 1998, Z's taxable loss attributable to the fast-pay arrangement is \$10,459 (the amount determined under paragraph (c) of this section), and the limit of paragraph (g)(2)(i) of this section is unavailable to Z.

(3) *Rule to comply with this section.* To comply with this section for each taxable year in which it failed to do so, a taxpayer should file an amended return. For taxable years ending before the date these regulations are published as final regulations, a taxpayer that has complied with Notice 97-21, 1997-1 C.B. 407 (see § 601.601(d)(2) of this chapter), is considered to have complied with this section.

(4) *Reporting requirements.* The reporting requirements of paragraph (f) of this section apply to taxable years (of the person required to file the statement) ending after the date these regulations are published as final regulations in the **Federal Register**.

John M. Dalrymple,
Deputy Commissioner of Internal Revenue.
[FR Doc. 99-178 Filed 1-5-99; 8:45 am]
BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 871]

RIN 1512-AB80

Petition for Johannisberg Riesling; Proposed Addition of Grape Variety Names for American Wines; Request for Additional Information for Other Proposed Grape Varieties (98R-406P)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing to extend the phase-out date for the use of the term Johannisberg Riesling as a designation for American wines, from January 1, 1999, until January 1, 2006. The effect of this proposed change would allow U.S. wineries to use Johannisberg Riesling as a designation for American wines made from White Riesling grapes for an additional seven years. The petition was received from the law firm of Buchman & O'Brien, and was filed on behalf of trade associations representing United States wineries. This petition asserts that this change

would allow American wineries additional time to educate consumers about the name change, and would provide additional time for wineries to change labels, packaging, and merchandising material for this wine. This petition proposes to extend the phase-out date for the term Johannisberg Riesling to January 1, 2006. After that date, wine made from White Riesling grapes would be required to be designated either "Riesling" or "White Riesling."

ATF has also received petitions proposing to add two new names, Traminette and Aglianico, to the list of prime grape variety names for use in designating American wines. Finally, ATF is soliciting comments or petitions for other grape varieties which wineries wish to use in producing and designating American varietal wines. These proposals are intended to ensure the list of prime grape names reflects grape varieties currently in use. ATF believes the listing of approved names of grape varieties for American wines will help standardize wine label terminology and prevent consumer confusion.

DATES: Written comments must be received by March 8, 1999. ATF specifically requests comments on the clarity of the proposed rule and how it may be made easier to understand.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221; Notice No. 871.

A copy of the petition and written comments in response to this notice of proposed rulemaking will be available for public inspection during normal business hours at: ATF Reference Library, Office of Public Affairs and Disclosure, Room 6300, 650 Massachusetts Avenue, NW, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Ms. Teri Byers, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; Telephone (202) 927-8195, or e-mail: <thbyers@atfhq.atf.treas.gov>.

SUPPLEMENTARY INFORMATION:

Background

Under § 4.23(b), a wine bottler may use a grape variety name as the designation of a wine if not less than 75 percent of the wine (51 percent in some circumstances) is derived from that grape variety. Under § 4.23(d), a bottler may use the name of two or more grape variety names as the designation of a wine if all varieties are listed on the brand label and the percentage of the

wine derived from each grape variety is shown on the label.

Treasury Decision ATF-370, 61 FR 522, January 8, 1996, adopted a list of grape variety names which ATF has determined to be appropriate for use in designating American wines. The list of prime grape names and their synonyms appears at § 4.91, while additional alternative grape names temporarily authorized for use are listed at § 4.92. Section 4.93 provides a means by which interested persons may petition the Director for inclusion of additional grape variety names in the list of prime grape names. Treasury Decision ATF-370 did not include Johannisberg Riesling in the list of prime names, either as a prime grape name or as a synonym. Johannisberg Riesling was instead listed as an alternative name in § 4.92 for use in advertising and labeling wines only until January 1, 1999, after which the required varietal designation for this wine would be Riesling or the synonym White Riesling.

A. *Johannisberg Riesling*

Treasury Decision ATF-370 authorized the use of the name "Riesling," standing by itself, as the prime name for wine made from this grape. Through evidence received during the rulemaking process, ATF determined that there was no longer the necessity to distinguish wine made from the true Riesling grape by use of the term "Johannisberg Riesling." Based on this evidence, and to provide accurate and correct grape variety names, ATF concluded that the name Johannisberg Riesling should no longer be permitted as a grape variety designation. Accordingly, Johannisberg Riesling was removed as a synonym for Riesling and made an alternative name in § 4.92. Johannisberg Riesling is listed in § 4.92(b), permitting its use in labeling wines prior to January 1, 1999.

ATF has received a petition from the law firm of Buchman & O'Brien, filed on behalf of trade associations representing United States wineries, requesting that ATF amend § 4.92 by adding a new paragraph (c). This proposed paragraph would authorize the use of the term "Johannisberg Riesling" for wines bottled prior to January 1, 2006. At the same time, the petition would remove Johannisberg Riesling from the list of grape names in § 4.92(b) which may only be used as grape wine designations for wine bottled prior to January 1, 1999.

The petition gives several reasons for extending the phase-out date of the term Johannisberg Riesling for American wines. Despite the fact that ATF made it clear in the notices issued prior to TD

ATF-370 that there was significant controversy surrounding the term Johannisberg Riesling, the petition alleges that ATF failed to provide the industry with notice that it was phasing out the term. The petition states that ATF provided such notice with other terms, e.g., Cabernet, Grey Reisling, Muscat Frontignon and Napa Gamay, because the two notices of proposed rulemaking issued prior to TD ATF-370 specifically proposed phasing out these terms. However, these notices did not specifically propose to phase-out the term Johannisberg Riesling. The petitioner also cites the 10-year phase-out period in the recently published Treasury decision relating to Gamay Beaujolais as support for extending the period. The petition asserts that because the Johannisberg Riesling designation has been in documented commercial use for over 100 years, an additional 7 years would provide enough transitional time to educate the consuming public regarding the designation change. Finally, the petition states that the abrupt elimination of Johannisberg Riesling would cause material economic harm and hardship to the United States wine industry.

In addition to the petition from Buchman & O'Brien, the Deutsches Weininstitut GmbH has submitted a letter supporting the extension of the transition period for the phase-out of Johannisberg Riesling. Recent letters from wine industry members have demonstrated their support for an extended transition period. Lastly, a marketing communications company, ELGIN, provided marketing information illustrating the negative impact on wineries and consumers should ATF restrict the Johannisberg Riesling phase-out period to three years. ELGIN drew a comparison between Johannisberg Riesling and the 1982 Nissan Corporation's decision to change from the Datsun brand name to Nissan. The change was implemented in the United States over a six year period, however Nissan still saw its share drop in the first two years from 5.9 percent to 4.5 percent due to the name change.

ATF requests comments from interested persons concerning this proposal to extend the phase-out date for the use of Johannisberg Riesling for seven years. ATF is also seeking any additional marketing studies or information regarding the impact on wineries and consumers should ATF restrict the phase-out period of Johannisberg Riesling to a shorter period. ATF wishes to make it clear that the airing of this petition does not represent any change in ATF's position, as stated in the preamble of T.D. ATF-

370, to eventually phase-out use of the term Johannisberg Riesling. This proposal only relates to Johannisberg Riesling and does not concern the use of geographic terms in labeling American wines.

B. *Proposed Addition of Grape Varieties*

ATF has received several petitions proposing that new grape variety names be listed in § 4.91. Under § 4.93 any interested person may petition ATF to include additional grape varieties in the list of prime grape names. Information for a petition includes evidence of the following: (1) Acceptance of the new grape variety; (2) the validity of the name for identifying the grape variety; (3) information that the variety is used or will be used in winemaking; and (4) information that the variety is grown and used in the United States. For the approval of names of new grape varieties, the petition should include: (1) A reference to the publication of the name of the variety in a scientific or professional journal of horticulture or a published report by a professional, scientific or winegrowers' organization; (2) a reference to a plant patent, if patented; and (3) information about the commercial potential of the variety such as the acreage planted or market studies. Section 4.93 also places certain restrictions on grape names which will be approved. A name will not be approved if it has previously been used for a different grape variety; if it contains a term or name found to be misleading under § 4.39; or if a name of a new grape variety contains the term "Riesling." The Director reserves the authority to disapprove the name of a newly-developed grape variety if the name contains words of geographical significance, place names, or foreign words which are misleading under § 4.39.

While two of the petitions proposing additional names appear to have provided sufficient evidence to satisfy § 4.93, ATF believes the other petitions need further evidence. Consequently, ATF is requesting further information from all sources regarding those petitions. ATF has reviewed available sources to determine whether any of the proposed names are entitled to protection as geographic indications under international agreements. ATF found no information indicating that any of these proposed variety names are entitled to such protection.

1. *Petitions Appearing To Have Sufficient Evidence To Satisfy § 4.93*

Tramiette Petition. At the request of Arbor Hill Associates, Naples, NY, Dr. Bruce Reicsh of the New York State

Agricultural Station, Cornell University, Geneva, NY, submitted a letter requesting that ATF include the grape variety "Traminette" on the list of prime grape names. According to Reisch's letter, Traminette is a grape variety recently released by Cornell University. It is a cross of Joannes-Seyve 23-416 with Gewürztraminer which was first made in 1965. The grapes from this cross were found to make excellent wine with similarities to their *vinifera* parent. Through extensive experimental plantings, Traminette has proven to be more winter hardy than its parent, very productive, and moderately resistant to powdery mildew and black rot.

The petition asserts that wines made with Traminette grapes have received high scores from Geneva Experimental Station taste panels since 1972, and amateur winemakers have produced good wines using these grapes. According to the petition, this grape was informally known as the "Gewürztraminer Hybrid" until recently when the New York State Agricultural Research Station in Geneva formally named this hybrid "Traminette." The Traminette hybrid will not be patented. Vines are commercially available for sale, and at least one winery has applied for a certificate of label approval for a Traminette wine.

Based on the evidence presented in this letter, ATF proposes to add the grape variety "Traminette" to the list of prime grape names at § 4.91.

Aglianico Petition. The Caparone Winery located in Paso Robles, California, petitioned ATF to add the grape variety name "Aglianico" to the list of prime grape names at § 4.91. According to their petition, Aglianico has long been recognized as one of Italy's finest red grape varieties. The petition states that this grape was cultivated in Italy by the Greeks and early Romans making it one of the oldest identified grape varieties.

Caparone Winery's petition states that Aglianico vines have been grown in the collection of the University of California at Davis for more than 50 years, and that their collection has been certified as true to variety. Their petition includes a letter from the Foundation Plants Materials Service at UC Davis attesting to the fact that Aglianico vines are grown in their vineyards and that these vines have been inspected by Dr. Anna Schneider, a recognized Italian grape variety expert and found to be true to variety.

Caparone Winery states they currently (as of June 1996) have 3½ acres of Aglianico grapes planted, that they have produced four vintages of wine from these grapes, and that the quality of

wine produced from them is excellent. They further state that other California wineries have plantings of this grape in their vineyards, and they expect there will be continuing interest in making wine from these grapes.

Based on the evidence presented in this petition, ATF proposes to add the grape variety "Aglianico" to the list of prime grape names at § 4.91.

2. Proposals Currently Lacking Sufficient Evidence To Satisfy § 4.93

Since the publication of T.D. ATF-370 in January 1996, ATF has received other petitions and requests to use grape variety names not listed in § 4.91. Some of these requests have not contained all of the information required by § 4.93, or have requested names that ATF has not been able to verify to be the correct variety as grown in the United States. Accordingly, we seek information about these proposed grape varieties which might lead to their future listing. If ATF receives sufficient documentation relative to specific grape varieties in response to this notice, we will list those names in § 4.91.

Vernaccia. Millbrook Winery, Millbrook, NY petitioned ATF to list the grape variety "Vernaccia." Millbrook's petition states that they obtained Vernaccia cuttings from the Foundation Plants Materials Service at University of California at Davis several years ago, and have cultivated this grape in their vineyards.

According to available literature, the term "Vernaccia" is associated with several unrelated Italian grape varieties including Vernaccia di Oristano, Vernaccia di San Gimignano, Vernaccia di Serrapetrona also called Vernaccia Nera, and Vernaccia Trentina also called Bianchetta Trevigiana. These varieties include both green and black grapes, and they are used in making distinctively different red, white, and sparkling wines. It is unclear from Millbrook's petition or from the Foundation Plants Materials Service listing which "Vernaccia" grape is actually contained in the FPMS collection and grown in vineyards in the United States. Until a positive determination is made, ATF will not list a nonspecific "Vernaccia" grape in the list of prime grape names. ATF seeks any information which will enable a positive identification of the "Vernaccia" grape(s) grown in the United States. If the evidence submitted pursuant to this notice supports inclusion of this name, then it will be adopted as part of the final rule.

Counoise. Eberle Winery, Paso Robles, California, petitioned ATF to list the grape variety Counoise in § 4.91.

Although this is a well documented red variety from the Rhône region of France, ATF has insufficient information to determine whether it is suitable for wine production in the United States, or the extent to which it may be grown domestically. ATF welcomes information about the domestic cultivation of this grape variety. If the evidence submitted pursuant to this notice supports inclusion of this name, then it will be adopted as part of the final rule.

Trousseau vs. Bastardo. Section 4.91 lists Trousseau as a prime grape name while § 4.92 lists Bastardo as an alternative name for this grape variety which cannot be used for designating American wine after January 1, 1997. Trousseau is a French name for the grape while Bastardo is the Portuguese name. Because of the use of this grape in producing Port-style dessert wines, ATF has been requested to reexamine whether the name Bastardo should be authorized as a synonym for Trousseau, or whether Bastardo should replace Trousseau as the prime grape name at § 4.91. ATF welcomes comments on these names.

Miscellaneous varieties. ATF is aware of several newly-developed grape varieties including several which may have potential for use in winemaking. ATF is aware also that many domestic wineries are experimenting with old world *vinifera* varieties not currently listed in § 4.91. We would like to remind the public that we welcome petitions from interested persons proposing to list additional grape varieties at § 4.91.

Public Participation—Written Comments

ATF requests comments from all interested persons. All comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that a respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927-8602, provided the comments: (1) are legible; (2) are 8½" × 11" in size; (3) contain a written signature; and (4) are three pages or less in length. Comments sent by FAX in excess of three pages

will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Executive Order 12866

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

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will extend the phase-out period for the use of the term Johannisberg Riesling and it will permit the use of other grape varietal names. The regulation will not impose any recordkeeping or reporting requirements. 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 the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction Act

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

Disclosure

Copies of this notice and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Room 6300, 650 Massachusetts Avenue NW, Washington, DC.

Drafting Information. This notice was written by Charles N. Bacon and Teri H. Byers, Regulations Division, 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:

PART 4—AMENDED

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

Authority: 27 U.S.C. 205.

Par. 2. Section 4.91 is amended by adding the names “Aglianico” and “Traminette,” in alphabetical order, to the list of prime grape names, to read as follows:

§ 4.91 List of approved prime names.

* * * * *

Aglianico

* * * * *

Traminette

* * * * *

Par. 3. Section 4.92 is amended by removing the name “Johannisberg Riesling” from paragraph (b) and revising paragraph (b), and by adding a new paragraph (c), to read as follows:

§ 4.92 Alternative names permitted for temporary use.

* * * * *

(a) * * *

(b) *Wines bottled prior to January 1, 1999.*

Alternative name	Prime name
Cabernet	Cabernet Sauvignon.
Grey Riesling	Trousseau gris.
Muscat Frontignan	Muscat blanc.
Muscat Pantelleria	Muscat of Alexandria.
Napa Gamay	Valdiguie.
Pinot Saint George	Négrette.
Sauvignon vert	Muscadelle.

(c) *Wines bottled prior to January 1, 2006.*

Alternative name	Prime name
Johannisberg Riesling	Riesling.

Signed: October 16, 1998.

John W. Magaw,
Director.

Approved: November 20, 1998.

John P. Simpson,
Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement).
[FR Doc. 98-34844 Filed 12-31-98; 2:07 pm]

BILLING CODE 4810-31-U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY-219-FOR]

Kentucky Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Kentucky regulatory program (hereinafter the “Kentucky program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment would change the Kentucky program regulations to authorize silviculture or managed woodland, and fish and wildlife, postmining land uses on mountaintop removal mining operations. The amendment is intended to revise the Kentucky program to encourage reforestation and creation of fish and wildlife habitat on reclaimed mine lands.

DATES: Written comments must be received by 4:00 p.m., February 5, 1999. If requested, a public hearing on the proposed amendment will be held on February 1, 1999. Requests to speak at the hearing must be received by 4:00 p.m., on January 21, 1999.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to William J. Kovacic, Director, at the address listed below.

Copies of the Kentucky program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM’s Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (606) 233-2494
Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940

FOR FURTHER INFORMATION CONTACT:
William J. Kovacic, Director, Lexington