

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2010–0002; T.D. TTB–87; Re: Notice No. 104]

RIN 1513–AB65

Yamhill-Carlton Viticultural Area (2008R–305P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision renames the “Yamhill-Carlton District” viticultural area, located in Yamhill and Washington Counties, Oregon, as the “Yamhill-Carlton” viticultural area. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Date:* December 3, 2010.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines

a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Yamhill-Carlton District Viticultural Area Background

In 2002, TTB's predecessor Agency, the Bureau of Alcohol, Tobacco and Firearms, received a petition from Mr. Alex Sokol-Blosser, Secretary of the North Willamette Valley [American Viticultural Area] Group, and Mr. Ken Wright, on behalf of certain grape growers, to establish a new viticultural area called the “Yamhill-Carlton District.” Located in northwestern Oregon, the Yamhill-Carlton District is about 35 miles southwest of Portland, Oregon, and 25 miles from the Pacific Ocean, in Yamhill and Washington Counties, Oregon, and entirely within

the larger Willamette Valley viticultural area (27 CFR 9.90).

On October 7, 2003, TTB published in the **Federal Register** (68 FR 57845) Notice No. 19, proposing the establishment of the Yamhill-Carlton District viticultural area. In response to that notice, the only comment TTB received was in support of the proposed establishment. On December 9, 2004, TTB published in the **Federal Register** (69 FR 71372) Treasury Decision (T.D.) TTB–20, establishing the Yamhill-Carlton District viticultural area (27 CFR 9.183) as proposed.

T.D. TTB–20 states that the Yamhill-Carlton District viticultural area boundary line surrounds the towns of Yamhill and Carlton, which lie 3 miles apart, along Route 47, in Yamhill County. The “Name Evidence” section states that the first time the two names were used together was in the 1853 establishment of the Yamhill-Carlton Pioneer Cemetery. The cemetery is identified on the USGS Carlton Quadrangle map (published in 1957; revised in 1992). The name was used again in 1955, when the Yamhill-Carlton Union High School was established in the Yamhill-Carlton School District. Residents still use the “Yamhill-Carlton” name today.

Petition To Change to the Yamhill-Carlton District Viticultural Area Name

In 2008, Mr. Ken Wright, of Ken Wright Cellars, submitted a petition to TTB to change the name of the viticultural area from “Yamhill-Carlton District” to “Yamhill-Carlton.” In this petition, Mr. Wright asserts that when the viticultural area was originally proposed “[t]he inclusion of the word ‘District’ was completely discretionary and added only to enforce the idea of the AVA [American viticultural area] being a regionalized area.” Further, he states that “[h]istorically, the area has always been referred to as simply ‘Yamhill-Carlton.’ Additionally, the length of the current name is very difficult to fit on a [wine] label. Many wineries have found it impossible, given their current label graphics, to utilize the name.”

Many others joined Mr. Wright, writing letters included with the petition, in support of renaming the Yamhill-Carlton District viticultural area as the Yamhill-Carlton viticultural area. Kathie Oriet, Mayor of the city of Carlton, Oregon, wrote: “As Mayor of the small city of Carlton, I feel the

viticultural area designation should represent the more commonly known name of Yamhill-Carlton. Many area joint ventures are known as Yamhill-Carlton in both Yamhill and Carlton, including the local school district, local sports groups and even the community luncheon group.”

Laurent Montalieu, winemaker at Solena Cellars, stated: “Historically, the area has been more commonly referred to [as] Yamhill-Carlton rather than the Yamhill-Carlton District, as well as the wines.” Mr. Mantalieu also noted that a change to the shorter “Yamhill-Carlton” would be helpful in printing [wine] labels.

David Grooters, owner of Carlton Cellars, explained: “The area is always referred to as Yamhill-Carlton. As in: ‘I went to Yamhill-Carlton High School,’ or ‘I grew up in Yamhill-Carlton.’ The simpler Yamhill-Carlton AVA [name] would be much preferable for use in our labeling and marketing materials.”

Brian O'Donnell of Belle Pente Vineyard and Winery stated that the region is more generally known as “Yamhill-Carlton,” not “Yamhill-Carlton District.” Mr. O'Donnell added: “I believe that there is a broad consensus with the Yamhill-Carlton winegrower community that making this change is the right thing to do, and I hope that the TTB will be able to take action.”

Jacki Bessler of Barbara Thomas Wines stated that shortening the name “will greatly impact our ability to attractively place the AVA designation on our label. Perhaps more important, however, is that by adding the word ‘District’ to Yamhill-Carlton, we have actually moved away [from] historical and geographic accuracy. I personally know of no other geographic, public, historic, or other Yamhill-Carlton name that has the term ‘district’ attached. We are known, simply, by Yamhill-Carlton.”

Name Evidence

TTB notes that the 2002 petition to establish the Yamhill-Carlton District viticultural area included entries in the local telephone book for the Yamhill-Carlton School District and the Yamhill-Carlton High School.

The current petition provides several recent examples of usage of the Yamhill-Carlton name without the word “District.” On March 17, 2007, the Community Press newspaper ran an advertisement for a dance sponsored by the Yamhill-Carlton Booster Club at the Yamhill-Carlton High School cafeteria. The Lincoln County School District Boys Basketball online schedule (accessed February 11, 2008) showed that the Yamhill-Carlton Tournament had been scheduled for November 30

and December 1, 2007. The Oregonian, a newspaper published in Portland, reported “Yamhill-Carlton 6, Seaside 5” in prep baseball (date unknown). A flyer, distributed by the Yamhill-Carlton Anti-Drug Coalition to announce it would meet on January 25, [2008] at 7 p.m., was addressed to “Dear Yamhill-Carlton Community Partner.” On February 11, 2008, “The Statesman Journal” reported biographical information online about Ed Glad, candidate for State Representative and formerly a member of the Yamhill-Carlton High School Site Counsel, according to the petition.

Additional examples of the use of the Yamhill-Carlton name provided with the petition include: (1) An e-mail announcing the Yamhill-Carlton Community Luncheon; (2) a brown bag lunch event with the police chiefs of Yamhill and Carlton as the guest speakers at Yamhill City Hall, on February 12, 2008; (3) a June 1, 2008, photograph showing the sign for the “Historic Yamhill-Carlton Pioneer Memorial Cemetery, Established 1853”; and (4) a listing for the “Yamhill-Carlton FFA Alumni” with the Oregon Future Farmers of America Association.

Search for the Term “Yamhill-Carlton”

A TTB query of the “Yamhill-Carlton” name on the USGS Geographic Names Information System database yielded no hits for the exact “Yamhill-Carlton” name usage. However, our query of the “Yamhill-Carlton” name using an Internet search engine yielded 44,000 results, some of which reference the existing Yamhill-Carlton District viticultural area within the general area of the Yamhill-Carlton region in northwest Oregon.

Notice of Proposed Rulemaking and Comments Received

On March 4, 2010, TTB published in the **Federal Register** (75 FR 9831) Notice No.104 setting forth a proposal to change the Yamhill-Carlton District viticultural area name to Yamhill-Carlton. We received no comments in response to that notice; we had received five letters of comment, all in support of the name change, with Mr. Wright's 2008 petition.

TTB Finding

After careful review of the petition, TTB finds that the evidence submitted supports changing the name of the “Yamhill-Carlton District” viticultural area to “Yamhill-Carlton.” Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we amend § 9.183 of the TTB regulations to re-name the

Yamhill-Carlton District viticultural area as the Yamhill-Carlton viticultural area, effective 30 days from the publication date of this document.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With approval of this viticultural area name change, the new name, “Yamhill-Carlton,” will be recognized under 27 CFR 4.39(i)(3) as a term of viticultural significance. The text of the amended regulation clarifies this point. This name change will affect vintners who currently and properly use the “Yamhill-Carlton District” viticultural area name as explained in the *Transition Period for “Yamhill-Carlton District” Labels* discussion below. “Yamhill-Carlton” has been recognized as a term of viticultural significance by TTB since the establishment of the Yamhill-Carlton District viticultural area. Therefore, dropping “District” from the viticultural area name will not change the viticultural significance of the term “Yamhill-Carlton.”

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term of viticultural significance appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Transition Period for “Yamhill-Carlton District” Labels

With adoption of the final rule renaming this viticultural area, under the new regulatory text, current holders of labels that were approved before the effective date of the final rule that use the “Yamhill-Carlton District” name to

designate a viticultural area will be permitted to use those approved labels during a 2-year transition period. At the end of the 2-year period, holders of approved "Yamhill-Carlton District" wine labels must discontinue their use as their certificates of label approval will be revoked by operation of the final rule. (See 27 CFR 13.51 and 13.72(a)(2).) The new regulatory text includes a statement to this effect as a new paragraph (d) in § 9.183. We believe the 2-year period will provide such label holders with adequate time to use up their supply of previously approved "Yamhill-Carlton District" labels.

TTB notes that label holders who continue to use labels showing the "Yamhill-Carlton District" name during the transition period also may apply for certificates of label approval with the Yamhill-Carlton name, and use such labels, if approved.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

■ For the reasons discussed in the preamble, we amend title 27 CFR, chapter 1, part 9, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Section 9.183 is amended by revising the section heading, paragraph (a), and the introductory text of

paragraphs (b) and (c), and by adding paragraph (d) to read as follows:

§ 9.183 Yamhill-Carlton.

(a) *Name*. The name of the viticultural area described in this section is "Yamhill-Carlton". For purposes of part 4 of this chapter, "Yamhill-Carlton" is a term of viticultural significance.

(b) *Approved maps*. The appropriate maps for determining the boundary of the Yamhill-Carlton viticultural area are eight 1:24,000 scale United States Geological Survey topography maps. They are titled:

* * * * *

(c) *Boundary*. The Yamhill-Carlton viticultural area is located in Yamhill and Washington Counties, Oregon, and is entirely within the Willamette Valley viticultural area. The Yamhill-Carlton viticultural area is limited to lands at or above 200 feet in elevation and at or below 1,000 feet in elevation within its boundary, which is described as follows—

* * * * *

(d) From February 7, 2005, until December 2, 2010, the name of this viticultural area was "Yamhill-Carlton District". Effective December 3, 2010, this viticulture area is named "Yamhill-Carlton". Existing certificates of label approval showing "Yamhill-Carlton District" as an appellation of origin are revoked by operation of this regulation on December 3, 2012.

Signed: July 20, 2010.

John J. Manfreda,
Administrator.

Approved: September 2, 2010.

Timothy E. Skud,
Deputy Assistant Secretary (Tax, Trade, and
Tariff Policy).

[FR Doc. 2010-27739 Filed 11-2-10; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2010-0902]

RIN 1625-AA00

Safety Zone: Richardson Ash Scattering by Fireworks, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of San Francisco

Bay 1,500 feet off Yellow Bluff, Sausalito, CA during a fireworks display in support of the Richardson Ash Scattering. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons and vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission from the Captain of the Port or her designated representative.

DATES: This rule is effective from 3:30 p.m. through 7 p.m. on November 6, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0902 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0902 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Ensign Liz Ellerson, U.S. Coast Guard Sector San Francisco; telephone 415-399-7436, e-mail D11-PF-MarineEvents@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule, as it would be impracticable because the event would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the