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FEDERAL REGISTER

27 CFR Part 9

Establishment of the Lime Kiln Valley Viticultural Area

[T.D. ATF-106; Ref: Notice Nos. 352 and 387]

*47 FR 24295*

June 4, 1982

**ACTION:** Treasury decision, final rule.

**SUMMARY:** This final rule establishes the Lime Kiln Valley viticultural area in San Benito County, California. The viticultural area, as established by this rule, differs from the proposed area of the petitioner, Enz Vineyards of Hollister, California. The original area covered approximately 9,500 acres while the approved area covers approximately 2,300 acres.

The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Lime Kiln Valley as a viticultural area and its subsequent use as an appellation of origin on wine labeling and in advertising will allow local wineries to better designate their specific grape-growing area and will enable consumers to better identify the wines they purchase.

**EFFECTIVE DATE:** July 6, 1982.

**TEXT: SUPPLEMENTARY INFORMATION:**

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (*43 FR 37671, 54624*) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin in wine labeling and advertising.

On October 2, 1979, ATF published Treasury Decision ATF-60 (*44 FR 56692*) which added a new Part 9 to 27 CFR for the listing of approved viticultural areas.

*Section 9.11, Title 27 CFR*, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features. Section 4.25a(e)(2) outlines the procedures for proposing an American

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

ATF was petitioned to establish a viticultural area in San Benito County to be named "Lime Kiln Valley." The petitioner, in describing the climatic characteristics of the proposed area, stated that the western end of the proposed area, which is mountainous, received an average of 40 inches of rainfall per year, while the eastern end, being the valley floor, received an average of 16 inches a year.

Subsequently, ATF issued Notice No. 352, published in the Federal Register on October 27, 1980 (*45 FR 70913*), proposing the establishment of Lime Kiln Valley as a viticultural area. The boundaries of the proposed area were described by summits of peaks and generally followed the area's watershed boundary.

A public hearing concerning the establishment of Lime Kiln Valley was held in Hollister, California, on January 21, 1981. The testimony at the hearing supported the establishment of a viticultural area, but a problem arose concerning the amount of rainfall within the proposed boundaries.

The petitioner stated that the variation in the rainfall would affect any grapes grown in the mountainous area differently than the grapes grown on the valley floor. Witnesses state that no grapes were grown in the mountainous area and no plantings were anticipated. Vineyard expansions planned are in the area included within the amended boundaries of the viticultural area. After evaluating the entire record concerning the climate of the area, ATF believed the boundaries of the proposed Lime Kiln Valley should be amended to exclude the mountainous areas. This change would limit the proposed viticultural area to one which exhibits uniform climatic characteristics. To accomplish this, ATF published Notice No. 387 (*46 FR 49599*, October 7, 1981) which proposed an amended boundary based primarily on the 1,400-foot contour line and Cienega Road. With this amended boundary, Lime Kiln Valley qualifies as a distinct grape-growing region.

Included within the viticultural area is one winery, approximately 80 acres cultivated by two growers (one being the petitioner), and planned expansion by Enz Vineyards of another 100 acres.

#### Evidence Relating to the Name

The area derived its name from a number of lime kilns built in the area. Many of the kilns were in operation prior to 1910. Witnesses testified that this particular valley, although a portion of the larger Cienega Valley, has always been distinct and known as Lime Kiln Valley. Furthermore, on September 6, 1977, the County Board of Supervisors unanimously adopted a resolution which formally named the area "Lime Kiln Valley." Vineyards were planted in this area in 1887, and the history of San Benito County relates to vine cuttings brought from France and obtained by the Spanish padres in the area. The Enz Vineyards and winery has been producing and marketing wine referring to a Lime Kiln Valley appellation since the early 1970's.

One commenter stated the name "Lime Kiln Valley" is not an historical name for the area and noted that the name "Lime Kiln Valley" does not appear on any U.S.G.S. maps of the area.

After evaluating the information contained in the petition and the comments received, ATF believes the historical and current evidence does support the name "Lime Kiln Valley" as a distinct viticultural area.

#### Geographical Evidence

In accordance with 27 CFR 4.25a(e)(2), a viticultural area should possess geographical features which distinguish it from surrounding areas.

With the amended boundaries, the area averages about 16 inches of rainfall a year. Witnesses stated this amount is

slightly higher than the surrounding areas, which average about 15 inches per year.

Winter temperatures average well below freezing, while the summer temperatures vary from 85-95 degrees during the day and drop to about 45-50 degrees at night. Witnesses further stated that these temperatures are cooler in the winter and warmer in the summer than the surrounding areas.

The soil in Lime Kiln Valley is basically a sandy and gravelly loam overlying bedrock of dolomite and limestone.

One commenter stated that the climate, topography, and soil of the proposed "Lime Kiln Valley" viticultural area was not distinct from the larger Cienega Valley. In addition, this commenter stated that the proposed area was too small to be of any consequence and its approval as a viticultural area would create a de facto monopoly.

Based on the evidence discussed earlier, ATF believes the written and oral testimony supports the fact that the Lime Kiln Valley exhibits distinct geophysical and climatic characteristics and is distinguishable as a separate valley from the larger, more generally defined, Cienega Valley. The size of an area and whether or not it creates a de facto monopoly are not criteria in determining the distinctiveness of a proposed area. Therefore, ATF is establishing the Lime Kiln Valley as a viticultural area.

#### Boundaries

As discussed earlier, Notice No. 387 was issued to amend the boundaries as originally proposed. ATF believes the boundaries now used delineate an area which exhibits similar characteristics, but differ from surrounding areas. The boundaries are described by primarily Cienega Road and the 1,400-foot contour line.

While ATF believes that viticultural area boundaries based solely on man-made features are inappropriate, where such features closely approximate natural features, or where they provide a demarcation line from grape-growing areas as opposed to areas not suitable for grape-growing, or where they provide a line to delineate a climatic feature, it is acceptable to use these man-made features in describing boundaries.

#### Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Regulatory Flexibility Act

The notice of proposed rulemaking which resulted in this final rule contained a certification under the provisions of section 3 of the Regulatory Flexibility Act (*5 U.S.C. 605(b)*), that if promulgated as a final rule, it will not have a significant impact on a substantial number of small entities. Therefore, the requirement contained in the Regulatory Flexibility Act (*5 U.S.C. 604*) for a final regulatory flexibility analysis shall not apply to this final rule.

#### Disclosure

Copies of the petition, the maps, comments, notices, the hearing proceedings, and the final rule are available for

inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4405, 12th and Pennsylvania Avenue, NW, Washington, DC.

#### Miscellaneous

ATF is approving this area as being viticulturally distinct from surrounding areas. By approving the area, wine producers are allowed to claim a distinction on wine labels. Any commercial advantage gained can only be substantiated by consumer acceptance of Lime Kiln Valley wines.

#### Drafting Information

The principal author of this document is Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices participated in the preparation of this document, both in matters of substance and style.

#### Federal Register Index Terms

27 CFR Part 9; Administrative Practice and Procedure; Consumer Protection; Wine.

#### Authority

Accordingly, under the authority contained in Section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

#### PART 9 -- AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.27. As amended, the table of sections reads as follows:

Sec.

#### 9.27 Lime Kiln Valley.

Par. 2. Subpart C is amended by adding § 9.27. As amended, Subpart C reads as follows:

§ 9.27 Lime Kiln Valley.

(a) *Name*. The name of the viticultural area described in this section is "Lime Kiln Valley."

(b) *Approved Maps*. The appropriate maps for determining the boundaries of the Lime Kiln Valley viticultural area are two U.S.G.S. maps entitled:

(1) "Mount Harlan Quadrangle, California," 7.5 minute series; and

(2) "Paicines Quadrangle, California," 7.5 minute series.

(c) *Boundaries*. The Lime Kiln Valley viticultural area is located in San Benito County, California. From the beginning point at the intersection of Thompson Creek and Cienega Road, the boundary proceeds, in a straight line to the summit of an unnamed peak (1,288 feet) in the northwest quarter of Section 28, T.14 S./R.6 E.;

(1) Thence in a straight line from the summit of the unnamed peak (1,288 feet) to a point where it intersects the 1,400-foot contour line, by the elevation marker, in the southwest quarter of T.14 S./R.6 E, Section 28;

(2) Thence following the 1,400-foot contour line through the following sections; Sections 28, 29, and 30, T.14 S./R.6 E.; Section 25, T.14 S./R.5 E.; Sections 30, 19, 20, and returning to 19, T.14 S./R.6 E., to a point where the 1,400-foot contour line intersects with the section line between Sections 19 and 18, T.14 S./R.6 E.;

(3) Thence in a straight line to the Cienega School Building along Cienega Road;

(4) Thence along Cienega Road to the point of beginning.

Signed: April 8, 1982.

G. R. Dickerson,

Director.

Approved: May 11, 1982.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 82-15078 Filed 6-3-82; 8:45 am]

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