

committee of the board of directors approving the arrangement.

5. A determination by the bidder's or the subject company's board of directors, as applicable, that the members of the board of directors or the committee of the board of directors, as applicable, approving an arrangement in accordance with the provisions of paragraph (d)(2) are independent in accordance with the provisions of this instruction to paragraph (d)(2) shall satisfy the independence requirements of paragraph (d)(2).

Instruction to paragraph (d): The fact that the provisions of paragraph (d) of this section extend only to employment compensation, severance and other employee benefit arrangements and not to other arrangements, such as commercial arrangements, does not raise any inference that a payment under any such other arrangement constitutes consideration paid for securities in a tender offer.

* * * * *

Dated: November 1, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6-18815 Filed 11-7-06; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[T.D. TTB-54; Re: Notice No. 54]

RIN 1513-AA89

Establishment of the Tracy Hills Viticultural Area (2003R-508P)

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

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the 39,200-acre Tracy Hills viticultural area in San Joaquin and Stanislaus Counties, California, approximately 55 miles east-southeast of San Francisco. 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 Dates:* December 8, 2006.

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; phone 415-271-1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide consumers with adequate information regarding product identity and prohibits the use of misleading information on those labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

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.

Tracy Hills Petition and Rulemaking

General Background

TTB received a petition from Sara Schorske of Compliance Service of America, Inc., filed on behalf of the Brown family, owners of a vineyard near Tracy, California. The petition proposed the establishment of the 39,200-acre "Tracy Hills" viticultural area south and southwest of the city of Tracy, California, in southern San Joaquin and northern Stanislaus Counties. Located approximately 55 miles east-southeast of San Francisco, the proposed Tracy Hills viticultural area currently encompasses 1,005 acres of vineyards. The proposed area is not within, nor does it include, any other proposed or established viticultural area.

Originally, the petitioner submitted the name "Mt. Oso" for this proposed viticultural area. However, after an initial review of the petition, TTB concluded and advised the petitioner that the submitted evidence did not demonstrate, as required by § 9.3(b)(1) of the TTB regulations, that the proposed viticultural area is locally or nationally known as Mt. Oso. In response, the petitioner amended the petition to propose use of the name "Tracy Hills" for the proposed viticultural area. The petitioner also revised the proposed viticultural area's western boundary and submitted additional evidence to support the amended petition. We summarize below the information submitted in support of the petition.

Name Evidence

The petitioner states that the name "Tracy," which is used to identify the city of Tracy, California, and its surrounding agricultural land, together with the geographical modifier "Hills," accurately describes and identifies the proposed Tracy Hills viticultural area. Stating that the name "Tracy Hills" is "locally and nationally associated with the proposed area," the petition discusses the rationale for the Tracy Hills name and offers examples of its

use for the land within the proposed viticultural area.

The petition includes copies of eight newspaper articles from the Tracy Press featuring petitioner Jeff Brown's Mt. Oso Vineyards or wines made from its grapes. The articles list the vineyard's location as Tracy, demonstrating, according to the petition, the close association between the proposed area's vineyards and the "Tracy" name.

However, the petition states that the use of "Tracy" alone for the proposed viticultural area does not accurately describe the area and would mislead consumers about the specific location of the area. The proposed viticultural area includes only a small part of the land within the Tracy city limits, and it does not include all the land surrounding the city of Tracy. Due to differences in climate, soil, water table levels, and slope, the land north, east, and southeast of Tracy is excluded from the proposed viticultural area.

Therefore, the petitioner emphasizes that it would be misleading and inaccurate to name the proposed viticultural area "Tracy," without adding "Hills" as a modifier. In support of this usage, the petitioner cites the use of "Valley" as a modifier in the names of the Napa Valley viticultural area (27 CFR 9.23), which surrounds the city of Napa, and the Temecula Valley viticultural area (27 CFR 9.50), which lies outside the city of Temecula in southern California.

To further support the use of the proposed "Tracy Hills" name, the petitioner notes that the foothills of the Coast Range southwest of the city of Tracy are informally called "the Tracy Hills," the lower elevations of which are included within the proposed viticultural area. The petition provides examples of the name's association with the proposed area.

The petition states that "Tracy Hills" is the name of a large real estate development located on the southwest side of the city of Tracy along either side of Interstate 580 (I-580). Part of the Tracy Hills development, the petition notes, is within the northern portion of the proposed Tracy Hills viticultural area. In 1998, the city of Tracy annexed the development, according to an article in the Stockton Record of July 7, 2004, "Council Delays Tracy Hills Vote," included in the revised petition. The revised petition also included copies of, or statements from, Federal Government environmental reports from the early 1990's, a 1999 Sierra Club newsletter, and newspaper articles from the Sacramento Bee and the Tracy Press that all discuss the Tracy Hills real estate

development and its location, growth, and impact on local water resources.

Also, the petition includes evidence of other references to the Tracy Hills name. For example, the petition includes a map of the proposed Northern California Passenger Rail Network. This map shows a future high-speed railroad line running through Altamont Pass and, east of the pass, a "Tracy Hills" station within the Tracy Hills development. The petition also includes information about the "Tracy Hills Ride," sponsored by the San Joaquin Valley Rangers, a family horse/mule club (<http://www.sjvr.org>). This horseback ride begins and ends within the proposed viticultural area along State Highway 132 (Bird Road), according to club information included in the petition. A 1995 NASCAR publication, the petition states, places the reopened Altamont Raceway "in the Tracy hills," while a September 29, 2003, East Bay Business Times article titled "Sutter, Kaiser Build Up Valley Presence," notes that a donor gave 20 acres "in the Tracy hills" for a hospital.

Boundary Evidence

Located south and southwest of the city of Tracy in southern San Joaquin and northern Stanislaus Counties, California, the proposed Tracy Hills viticultural area largely lies between State Route 33 to the east and I-580 to the west, with a portion of the area reaching west of the interstate into the foothills of the Diablo Mountains. The proposed area is about 15 miles long northwest to southeast and about 5 miles wide east to west.

The portion of the Tracy Hills real estate development appropriate for viticulture, the petitioner explains, is included in the northern region of the proposed Tracy Hills viticultural area. Other parts of the proposed viticultural area lie within the San Joaquin Valley's rural agricultural lands to the southwest and south of the city of Tracy, according to the provided USGS maps and the California State Automobile Association Central California map of May 2001.

Distinguishing Features

The boundary of the proposed Tracy Hills viticultural area, according to the petitioner, encompasses viticultural features that distinguish the proposed viticultural area from the regions north, east, and southeast of the city of Tracy. According to the petitioner, these distinguishing features include the proposed area's slope, soils, and microclimate.

Slope

The proposed Tracy Hills viticultural area is nestled between the lower elevations of the floor of the San Joaquin River Valley to the east and the steeper terrain of the Diablo Range to the west; it has east-sloping terrain, as shown on the provided USGS maps. The proposed viticultural area boundary encompasses a 400-foot change in elevation and includes streams, most of a northern, east-sloping alluvial fan and part of a southern, east-sloping alluvial fan, and plains along the proposed southern boundary line, according to the petitioner and the provided USGS maps. The alluvial fans are between Lone Tree and Hospital Creeks and between Hospital Creek and Ingram Canyon Road, which parallels an unnamed intermittent creek.

The petitioner notes that the 100-to-500-foot elevation within the proposed Tracy Hills viticultural area is distinct from the surrounding areas. To the west of the proposed boundary line are the significantly higher elevations and steep terrain of the Diablo Range, as noted on USGS maps of the area. To the north and east, nearly at sea level, are the flood plains along the San Joaquin River. The proposed southern boundary line, according to the written boundary description and the Solyo Quadrangle USGS map, includes a straight line connecting the 500-foot elevation, to the southwest, with Hamilton Road on the valley floor. Hamilton Road eventually connects with McCracken Road at the proposed southeast corner.

Soils

The petitioner states that soils in the proposed Tracy Hills viticultural area formed predominantly in alluvium washed from the higher areas in the Diablo Range, beyond the proposed boundary. Although similar to the soils to the south, the petitioner explains, the alluvial soils of the proposed viticultural area are distinct from the soils formed in sedimentary rocks of the mountains to the west, the organic, peat soils to the north, and the heavy clay soils to the east.

Microclimate

The petitioner states that the proposed Tracy Hills viticultural area has a distinctive microclimate, contrasting with the climate of the surrounding region. The proposed viticultural area, the petitioner states, is located within the rain shadow of Mt. Oso, which is located southwest of the proposed area, in the Diablo Mountains. The effect of the rain shadow is to give the proposed viticultural area a drier

climate with less fog, dew, frost, and hail. Beyond the proposed boundary to the west, north, and south, the distinctive differences in geography and proximity to the Altamont Pass create a wetter, windier climate, according to the petition.

Notice of Proposed Rulemaking and Comments Received

On December 7, 2005, TTB published in the **Federal Register** (70 FR 72733) Notice No. 54 regarding the proposed establishment of the Tracy Hills viticultural area. We received one comment in response to that notice. The comment supported establishment of the Tracy Hills viticultural area, expressing potential increased value for wine grapes grown in the area and prevention of urban sprawl.

TTB Finding

After review of the petition and the comment received, TTB finds that the evidence submitted supports the establishment of the proposed viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the "Tracy Hills" viticultural area in San Joaquin and Stanislaus Counties, California, effective 30 days from the publication date of this document.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this document.

Maps

The maps for determining the boundary of the viticultural area are listed below in the regulatory text.

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 the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, its name, "Tracy Hills," is recognized under 27 CFR 4.39(i)(3) as a name of viticultural significance. The text of the new regulation clarifies this point. Consequently, wine bottlers using "Tracy Hills" in a brand name, including a trademark, or in another label reference as to the origin of the wine, must ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

For a wine to be eligible to use as an appellation of origin a viticultural area name or other term specified 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 to use the viticultural area name or other term as an appellation of origin 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 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 that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

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, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

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

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

■ For the reasons discussed in the preamble, we amend 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. Subpart C is amended by adding § 9.204 to read as follows:

§ 9.204 Tracy Hills.

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

(b) *Approved maps.* The appropriate maps for determining the boundary of the Tracy Hills viticultural area are five USGS 1:24,000-scale, topographic maps. They are titled:

- (1) Tracy, Calif., 1954, photorevised 1981;
- (2) Vernalis, CA, 1991;
- (3) Solyo, Calif., 1953, photorevised 1971, photoinspected 1978;
- (4) Lone Tree Creek, Calif., 1955, photorevised 1971; and
- (5) Midway Calif., 1953, photorevised 1980.

(c) *Boundary.* The Tracy Hills viticultural area is located in southwestern San Joaquin County and northwestern Stanislaus County in the State of California. The boundary of the Tracy Hills viticultural area is as described below.

(1) The beginning point is on the Tracy map at the intersection of the Delta-Mendota Canal and Lammers Ferry Road, along the western boundary line of section 6, T3S/R5E. From the beginning point, proceed 0.4 mile generally southeast along the Delta-Mendota Canal to its intersection with the Western Pacific Railway line along the southern boundary line of section 6, T3S/R5E (Tracy map); then

(2) Proceed 5.6 miles straight east along the Western Pacific Railway line and then along Linne Road to the intersection of Linne Road and Lehman Road, along the northern boundary line of section 12, T3S/R5E (Vernalis map); then

(3) Proceed 1.5 miles straight south and then east along Lehman Road to its intersection with Bird Road at the southeast corner of section 12, T3S/R5E (Vernalis map); then

(4) Proceed 1 mile straight south along Bird Road to its intersection with Durham Ferry Road at the southeast corner of section 13, T3S/R5E (Vernalis map); then

(5) Proceed 1.9 miles straight east along Durham Ferry Road to its intersection with State Highway 33 along the northern boundary line of section 20, T3S/R6E (Vernalis map); then

(6) Proceed 5.1 miles straight southeast along State Highway 33, passing the hamlet of Vernalis, to the highway's intersection with McCracken Road along the eastern boundary of section 2, T4S/R6E (Solyo map); then

(7) Proceed 3.4 miles straight south along McCracken Road to its

intersection with Hamilton Road at the southeast corner of section 23, T4S/R6E (Solyo map); then

(8) Proceed 2.4 miles straight west along the southern boundary lines of sections 23, 22, and 21, T4S/R6E, crossing the Delta-Mendota Canal and the California Aqueduct, to the junction of the southern boundary of section 21, the 500-foot elevation line, and the westernmost transmission line, (Solyo map); then

(9) Proceed 4.2 miles generally northwest along the meandering 500-foot elevation line to section 18, T4S/R6E, where the 500-foot elevation line crosses all the transmission lines and then continues northwest a short distance to the easternmost transmission line in the northwest quadrant of section 18, T4S/R6E, (Solyo map); then

(10) Proceed 8.45 miles straight northwest along the easternmost transmission line, crossing from the Solyo map, over the Lone Tree Creek map, to the Tracy map, and continue to the transmission line's intersection with the western boundary of section 19, T3S/R5W, about 0.7 mile north-northeast of Black Butte (Tracy map); then

(11) Proceed in a straight line 2 miles northwest to this line's intersection with the 500-foot elevation line, immediately north of an unimproved dirt road, just north of the midpoint of the western boundary line of section 12, T3S/R4E (Tracy map); then

(12) Proceed 0.65 mile straight north along the western boundaries of section 12 and then section 1 to the section 1 line's intersection with Interstate Highway 580 (I-580), section 1, T3S/R4E (Tracy map); then

(13) Proceed 0.8 mile straight northwest along I-580 to its intersection with the Western Pacific Railway line in section 2, T3S/R4E (Midway map); then

(14) Proceed easterly 0.7 mile along the Western Pacific Railway line to its intersection with the eastern boundary line of section 2, T3S/R4E (Tracy map); and

(15) Proceed east for 1 mile in a straight line, returning to the beginning point.

Signed September 7, 2006.

John J. Manfreda,
Administrator.

Approved: September 23, 2006.

Timothy E. Skud,

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

[FR Doc. E6-18894 Filed 11-7-06; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07-06-019]

RIN 1625-AA09

Drawbridge Operation Regulations; S.E. Third Avenue, Andrews Avenue, Marshall/Seventh Avenue and Davie Boulevard/S.W. Twelfth Street bridges, New River and New River South Fork, Miles 1.4, 2.3, 2.7, and 0.9 at Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulation governing the operation of the SE. Third Avenue, Andrews Avenue and Marshal (Seventh Avenue) bridges across the New River, miles 1.4, 2.3, and 2.7 and the regulations governing the operation of the Davie Boulevard (SW. Twelfth Street) bridge across the New River, South Fork, mile 0.9, Fort Lauderdale, Broward County, Florida.

DATES: This rule is effective December 8, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD07-06-019) and are available for inspection or copying at Commander (dph), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, Florida 33131-3050 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Seventh Coast Guard District, Bridge Branch, telephone number 305-415-6744.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 22, 2006, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; SE. Third Avenue, Andrews Avenue, Marshall/Seventh Avenue and Davie Boulevard/SW. Twelfth Street bridges, New River and New River South Fork, Miles 1.4, 2.3, 2.7, and 0.9 at Fort Lauderdale, FL in the *Federal Register* (71 FR 35852). We received one comment in favor of the proposed rule.

Background and Purpose

The current regulations governing the operation of the S.E. Third Avenue and Andrews Avenue bridges are published

in 33 CFR 117.313. They require the draw of the SE. Third Avenue bridge, mile 1.4 at Fort Lauderdale, to open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Friday, the draw need not be opened for the passage of vessels. Public vessels of the United States, regularly scheduled cruise vessels, tugs with tows, and vessels in distress shall be passed at any time. The draw of the Andrews Avenue bridge, mile 2.3 at Fort Lauderdale, is required to open on signal; however, the draw need not be opened for upbound vessels when the draw of the Florida East Coast railroad bridge, mile 2.5 at Fort Lauderdale, is in the closed position for the passage of a train. The current regulation governing the operation of the Davie Boulevard (SW. Twelfth Street) bridge is published in 33 CFR 117.315 and requires the bridge to open on signal except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Friday, the draw need not be opened for the passage of vessels. Public vessels of the United States, regularly scheduled cruise vessels, tugs with tows, and vessels in distress shall be passed through the draw as soon as possible.

The City of Fort Lauderdale requested that the Coast Guard change the operating regulations for four bridges on the New River and New River, South Fork, that we consider adding an additional half-hour to the morning and afternoon curfew hours to the SE. Third Avenue and the Davie Boulevard (SW. Twelfth Street) bridges, and that we change the operating regulations of the Andrews Avenue and Marshal (Seventh Avenue) bridges to include these curfew periods. The City of Fort Lauderdale contended that changing these periods to allow, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw not to be opened for the passage of vessels, will help alleviate the existing vehicle traffic delays.

Discussion of Comments and Changes

The Coast Guard received one response to the Notice of Proposed Rulemaking. This response consisted of a letter from Broward County stating that they believe the change will be beneficial. No changes have been made to this final rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and