

1. Arla Foods Ingredients amba, "Petition to Amend the Regulation for 21 CFR Sec. 101.80 to Authorize a Noncariogenicity Dental Health Claim for D-tagatose," CP-1, Docket No. 02P-0177, January 9, 2002.

■ Accordingly, the interim final rule amending 21 CFR 101.80 that was published in the **Federal Register** of December 2, 2002 (67 FR 71461), is adopted as a final rule without change.

Dated: June 30, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03-16949 Filed 7-1-03; 10:06 am]

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## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 9

[TTB T.D.-3; Re: Notice No. 957]

RIN 1512-AC70

#### Seneca Lake Viticultural Area (99R-260P)

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

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

**SUMMARY:** This Treasury decision establishes the "Seneca Lake" viticultural area located in upstate New York. The Seneca Lake viticultural area encompasses about 204,600 acres of land surrounding Seneca Lake within the established Finger Lakes viticultural area. We take this action under the authority of the Federal Alcohol Administration Act and our wine labeling and advertising regulations.

**EFFECTIVE DATE:** This final rule is effective on September 2, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kristy Colón, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927-8210.

#### SUPPLEMENTARY INFORMATION:

##### Background on Viticultural Areas

##### *What Is Treasury's and TTB's Authority To Establish a Viticultural Area?*

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of deceptive information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue

regulations to carry out the Act's provisions.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Title 27 CFR Part 9, American Viticultural Areas, contains the list of approved viticultural areas.

##### *What Is the Definition of an American Viticultural Area?*

Section 4.25a(e)(1), title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. The establishment of viticultural areas allows the identification of regions where a given quality, reputation, or other characteristics of the wine is essentially attributable to its geographic origin. The establishment of viticultural areas is intended to help wineries to accurately describe the origin of their wines to consumers and to help consumers identify the wines they purchase. Establishment of a viticultural area is neither an approval nor endorsement of the wine produced there.

##### *What Is Required To Establish a Viticultural Area?*

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition TTB to establish a grape-growing region as a viticultural area. The petition must 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 the boundaries of the proposed viticultural area are as specified in the petition;
- Evidence that the proposed area's growing conditions, such as climate, soils, elevation, physical features, etc., distinguish it from surrounding areas;
- A description of the proposed viticultural area's specific boundaries, based on features found on United States Geological Survey (USGS)-approved maps; and
- A copy of the appropriate USGS-approved map(s) with the boundaries prominently marked.

##### *Impact on Current Wine Labels*

With the establishment of this viticultural area, bottlers who use brand names like Seneca Lake may be affected.

If you fall in this category, you must ensure that your existing products are eligible to use the name of the viticultural area as an appellation of origin. For a wine to be eligible, at least 85 percent of the grapes in the wine must have been grown within the viticultural area.

If the wine is not eligible for the appellation, you must change the brand name and obtain approval of a new label. Different rules apply if you label a wine in this category with a label approved prior to July 7, 1986. See 27 CFR 4.39(i) for details. Additionally, if you use the viticultural area name on a wine label in a context other than appellation of origin, the general prohibitions against misleading representation in part 4 of the regulations apply.

##### Rulemaking Proceeding

###### *ATF-TTB Transition*

Effective January 24, 2003, the Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms, and Explosives in the Department of Justice. The regulation and taxation of alcohol beverages remains a function of the Department of the Treasury and is the responsibility of TTB. References to the former ATF and the new TTB in this document reflect the time frame, before or after January 24, 2003.

###### *Seneca Lake Petition*

ATF received a petition from Ms. Beverly Stamp of Lakewood Vineyards in Watkins Glen, New York, proposing to establish the "Seneca Lake" viticultural area. The petitioned area included portions of Schuyler, Yates, Ontario, and Seneca counties in upstate New York and covers approximately 204,600 acres of primarily rural agricultural and forestland. Of that total, 3,756 acres are planted to grapes. There are currently 33 wineries on or near Seneca Lake, one of New York's eleven Finger Lakes. The Cayuga Lake viticultural area lies to the east of the area, and both are entirely within the established Finger Lakes viticultural area.

###### *Notice of Proposed Rulemaking*

ATF published a notice of proposed rulemaking regarding the Seneca Lake viticultural area in the October 21, 2002, **Federal Register** as Notice No. 957 (67 FR 64575). In that notice, ATF requested comments by December 21, 2002, from

all interested persons concerning the establishment of this viticultural area. ATF received one comment regarding Notice No. 957 from Representative Amo Houghton of New York's 31st Congressional District. Representative Houghton supported the establishment of the Seneca Lake viticultural area and commented, "It is the largest, most diverse community of wine producers in the Eastern United States. The twenty-one wineries along the shores of Seneca Lake offer individual and unique expressions from one of America's finest wine districts \* \* \*. Carved by glaciers, and surrounded by vineyards since the mid 1800's—a Seneca Lake viticultural area has already been created through geologic and human history." Additionally, Representative Houghton mentioned benefits to the viticultural area's establishment. "This unique area's recognition by the ATF would perfectly complement an existing regional framework of tourism, research and economic development, and promotion of the Seneca Lake identity and all that it represents. This would be of great benefit to consumers who seek products that allow them [to] capture, in a bottle, the essence of places and regions that enthrall them."

*What Evidence Was Provided To Show the Name "Seneca Lake" Is Locally or Nationally Known?*

According to the petitioner, Seneca Lake was named after the Seneca people of the Iroquois Nation who lived along its shores hundreds of years ago. Many local places and geographic features are named after the Seneca people. These include, for example, Seneca Lake, Seneca County, the Seneca River, Seneca Castle, Seneca Army Depot, and Seneca Lake State Park. Additionally, the organization known as the Seneca Lake Winery Association includes many of the area's wineries.

To demonstrate that the area is locally and nationally known as "Seneca Lake," the petitioner included several newspaper and magazine articles as evidence of the name's use. In an article from the Rochester, New York Democrat and Chronicle newspaper of November 15, 1999, entitled "Your Land, Our Land: Finger Lakes in the Fast Lane," Ray Spencer, vice president of operations of Glenora Wine Cellars, stated that many "already refer to Seneca Lake as 'the Napa Valley of the East.'" In the February 1997 issue of *Wines & Vines*, a California based magazine, author Philip Hiaring described his visit to the Seneca Lake region and his interviews with winery owners and winemakers.

In addition, Seneca Lake is mentioned in "The Oxford Companion to the Wines of North America." The book states that Seneca Lake is surrounded by more than two-dozen wineries, is one of the two largest Finger Lakes, and is the deepest "with the greatest heat storing capacity, offering the surrounding hillsides the strongest mesoclimatic benefit." While the lake's first winery was built in 1866, the book notes that the emergence of vinifera varieties resulted in an increase of winery openings in the 1980's that brought new momentum to the region's grape-growing industry.

*What Boundary Evidence Was Provided?*

The boundaries of the Seneca Lake viticultural area encompass about 204,600 acres of largely rural land surrounding Seneca Lake, the largest of upstate New York's eleven Finger Lakes. While some of the road names used in the boundary description do not appear on the submitted USGS maps, the petitioner provided the locally known names of these roads, as well as a more detailed map of the town of Watkins Glen indicating minor roads.

Using roads and streams, the petitioner drew the Seneca Lake viticultural area's boundaries to contain the vineyards influenced by the lake's climatic effect. In addition, the petitioner noted that distinct ridges divide Seneca Lake from its closest neighbor, Cayuga Lake, and the nearly 800-foot elevation change within the 7.5 miles between them gives the two lakes their own microclimates.

*What Evidence Relating to Growing Conditions Was Provided?*

The "lake effect" weather phenomenon makes the Seneca Lake viticultural area a "unique and superb" wine-growing region, according to the petitioner. The "Oxford Companion to Wine", published by the Oxford University Press, Inc., New York, describes lake effect as "the year-round influence on vineyards from nearby large lakes which permits vine-growing in the northeast United States and Ontario in Canada despite their high latitude."

The "Oxford Companion" also notes that the lake effect influence on grape vines changes with the seasons. It states that:

In the winter, the large lakes provide moisture to the prevailing westerly winds, which creates a deep snow cover, protecting vines from winter freeze even in very low temperatures. \* \* \* In spring, the westerly winds blow across the frozen lake and become cooler. These cooler breezes blowing

on the vines retard bud-break until the danger of frost has passed. In summer the lake warms up. By autumn/fall, the westerly winds are warmed as they blow across the lake. The warm breezes on the vines lengthen the growing season (balancing the late start to the growing season) by delaying the first frost.

The petitioner also provided an extract from Richard Figiel's book "Culture in a Glass," that describes how the lake effect phenomenon affects the Finger Lakes region. Noting that both Seneca and Cayuga Lakes drop well below sea level, Figiel states that since the lakes are "(n)arrow slices of water with relatively little surface area, they tend to maintain a stable temperature throughout the year." Figiel notes that the depth and heat storing capacity of the lakes act as a large radiator for the surrounding area during the winter months. "Not only do the lakes take the edge off frigid upstate winters, often keeping vineyards 10–15° warmer than locations just a half mile away," the book adds, "but they also cushion the transitions of spring and fall." Figiel also points out that the "(d)istinct microclimates along the hillsides rising from the lakeshores make it possible to reliably ripen grapes in a region that is generally too cold for viticulture \* \* \*."

The petitioner stated that it is the size and depth of Seneca Lake that gives the lake its ability to influence the local climate. Additionally, a report provided by the petitioner, entitled "Viticultural Distinction of Seneca Lake in the New York Finger Lakes", includes a physical description of Seneca Lake. The report states that, "Seneca Lake is the largest of the Finger Lakes covering 67.7 square miles. The lake is 35.1 miles long and is an average of 1.9 miles wide with a shoreline of 75.4 miles. It has a volume of 4.2 trillion gallons with a maximum depth of 634 feet. At 150 feet, the water temperature remains at 39°F (4°C) year around. Above that level, the water temperature varies seasonally, but the surface temperature generally does not go below 39.5°F (4°C)." While Seneca Lake chills down, the petition adds, it rarely freezes during the winter months. The petition also noted that the Seneca region has the longest frost-free period in the Finger Lakes, with a growing season of about 190 days. In contrast, neighboring Cayuga Lake's growing season is only 165 to 170 days long.

Seneca Lake's latent heat storage capacity alters the local climate to such an extent, the petition stated, that grapes can be grown in an area where they otherwise would not survive the cold temperatures of early spring, or the late autumn frosts. Together with the good

air drainage offered by the slopes leading to its shore, the lake's water temperature provides cool breezes in the spring, preventing early bud break in the fruit. In the fall, the lake's warmth delays early frosts, and in the winter it raises temperatures so that bud damage is lessened.

According to the petitioner, it is this ability to protect a crop from extreme temperatures during both the growing and dormant seasons that distinguishes the Seneca Lake viticultural area from the surrounding areas. This lake effect is strongest within about one-half mile of Seneca Lake. For this reason, the more tender vinifera varieties are planted within this zone, while hardier American varieties and hybrids can be planted higher on the slopes. The petitioner added that smaller lakes, even those the size of Cayuga Lake, do not have the same level of latent heat capacity and, therefore, do not modify the local climate to the same extent as Seneca Lake.

#### Regulatory Analyses and Notices

##### *Is This a Significant Regulatory Action as Defined by Executive Order 12866?*

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

##### *How Does the Regulatory Flexibility Act Apply to This Final Rule?*

TTB certifies that the regulations 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 own efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

##### *Does the Paperwork Reduction Act Apply to This Final Rule?*

The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised record keeping or reporting requirements.

#### Drafting Information

The principal author of this document is Kristy Colón, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

#### List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Alcohol and alcoholic beverages, Consumer protection, and Wine.

#### Authority and Issuance

■ For the reasons discussed in the preamble, title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended 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 § 9.128 to read as follows:

##### § 9.128 Seneca Lake

(a) *Name.* The name of the viticultural area described in this section is "Seneca Lake".

(b) *Approved Maps.* The appropriate maps for determining the boundary of the Seneca Lake viticultural area are 13 United States Geological Survey (USGS) topographic maps (Scale: 1:24,000). The maps are titled:

- (1) Burdett Quadrangle (New York—Schuyler Co. 1950 (photoinspected 1976));
- (2) Montour Falls Quadrangle (New York 1978 (photorevised 1976));
- (3) Beaver Dams Quadrangle (New York 1953);
- (4) Reading Center Quadrangle (New York 1950 (photorevised 1978));
- (5) Dundee Quadrangle (New York 1942 (photoinspected 1976));
- (6) Dresden Quadrangle (New York 1943 (photorevised 1978));
- (7) Penn Yan Quadrangle (New York—Yates Co. 1942 (photoinspected 1976));
- (8) Stanley Quadrangle (New York 1952);
- (9) Phelps Quadrangle (New York—Ontario Co. 1953);
- (10) Geneva North Quadrangle (New York 1953 (photorevised 1976));
- (11) Geneva South Quadrangle (New York 1953 (photorevised 1978));
- (12) Ovid Quadrangle (New York—Seneca Co. 1970); and
- (13) Lodi Quadrangle (New York 1942).

(c) *Boundaries.* The Seneca Lake viticultural area surrounds Seneca Lake in upstate New York and is located in portions of Schuyler, Yates, Ontario, and Seneca counties. The boundaries are as follows:

(1) Beginning in the town of Watkins Glen at the State Route 414 bridge over the New York State Barge Canal, follow the Canal south approximately 0.2 miles to the mouth of Glen Creek, on the Burdette, N.Y. map;

(2) Follow Glen Creek upstream (west), crossing onto the Montour Falls, N.Y. map and continuing to the road locally known as the Van Zandt Hollow Road on the Beaver Dams, N.Y. map;

(3) Proceed north on Van Zandt Hollow Road to Cross Road;

(4) Continue north on Cross Road, which changes to Crettsley Road, to its intersection with Mud Lake Road (County Road 23) on the Reading Center, N.Y. map;

(5) Proceed west approximately 0.7 miles on County Road 23 to its intersection with Pre-emption Road;

(6) Then continue north on Pre-emption Road along the Dundee, N.Y., Penn Yan, N.Y. and Dresden, N.Y. maps, for approximately 18 miles to its junction with an unnamed light duty road just east of Keuka Lake Outlet on the Penn Yan, N.Y. map;

(7) Follow the unnamed light duty road across the Keuka Outlet, traveling approximately 0.3 miles to its junction in Seneca Mills with an unnamed light duty road, known locally as Outlet Road;

(8) Follow Outlet Road west along the north bank of the Keuka Outlet approximately 0.6 miles, until the road forks;

(9) At the fork, continue north approximately 1 mile, on an unnamed light duty road known locally as Stiles Road, to its junction with Pre-emption Road.

(10) Then proceed north 14.6 miles on Pre-emption Road across the Stanley, N.Y. map, to an unnamed medium duty road, known locally as County Road 4, on the Phelps, N.Y. map;

(11) Continue west approximately 4.5 miles on County Road 4 to its intersection with Orleans Road in Seneca Castle;

(12) Then proceed north on Orleans Road, which becomes Seneca Castle Road, for 2.1 miles, to Warner Corners where the name of the road changes to Wheat Road;

(13) Continue north from Warner Corners on Wheat Road approximately 1.9 miles to its intersection with State Route 88;

(14) Continue north on State Route 88 approximately 1.4 miles, to its intersection with State Route 96 at Knickerbocker Corner;

(15) Continue east on State Route 96 approximately 10.4 miles, to the intersection with Brewer Road on the Geneva North, N.Y. map;

(16) Follow Brewer Road south approximately 1.8 miles to the intersection with U.S. Route 20/State Route 5;

(17) At the intersection of Brewer Road and U.S. Route 20/State Route 5, continue south approximately 0.1 miles, following an imaginary line to the south bank of the Seneca River;

(18) Follow the south bank of the Seneca River east approximately 0.1 miles to the mouth of the Kendig Creek;

(19) Continue south following the Kendig Creek approximately 3.3 miles to the Creek's intersection with Yellow Tavern Road on the Geneva South, N.Y. map;

(20) Follow Yellow Tavern Road west approximately 0.1 miles, to its intersection with Post Road;

(21) Follow Post Road south approximately 1.4 miles to its junction with State Route 96A;

(22) Then follow State Route 96A south 17.5 miles across the Dresden, N.Y., Ovid, N.Y., and Lodi, N.Y. maps to the village of Lodi;

(23) In Lodi, continue south where State Route 96A changes to S. Main Street and then changes to an unnamed medium duty road (known locally as Center Road-Country Road 137);

(24) Continue south on Center Road-Country Road 137 for approximately 4.9 miles to the Seneca/Schuyler County Line;

(25) Then proceed west 0.5 miles on the county line to Logan Road;

(26) Then proceed 8.6 miles south on Logan Road to State Route 227 (identified by the petitioner as State Route 79) on the Burdette, N.Y. map;

(27) Then proceed approximately 800 feet east on Route 227 to Skyline Drive;

(28) Then proceed south on Skyline Drive for 2.5 miles to an unnamed stream;

(29) Follow the unnamed stream west approximately 0.6 miles to its intersection with State Route 414; and

(30) Continue west on State Route 414 approximately 0.5 miles to the beginning point on the bridge over the New York State Barge Canal.

Dated: May 14, 2003.

**Arthur J. Libertucci,**  
Administrator.

Approved: June 4, 2003.

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

[FR Doc. 03-16703 Filed 7-2-03; 8:45 am]

BILLING CODE 4810-31-P

## NATIONAL LABOR RELATIONS BOARD

### 29 CFR Part 102

#### Revisions of Regulations Concerning Procedures for Filing Appeals to Regional Directors' Refusal To Issue, or Reissue, Complaint

**AGENCY:** National Labor Relations Board.

**ACTION:** Final rule.

**SUMMARY:** The General Counsel of the National Labor Relations Board is amending regulations concerning the procedures for filing an appeal to the General Counsel from a Regional Director's dismissal of an unfair labor practice charge. The revisions, which reflect the actual practice under existing regulations, relieve persons seeking review from being required to file a complete and separate statement apart from the Appeal Form (Form 4767) to perfect an appeal before the Office of Appeals.

**DATES:** Effective July 3, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Lester A. Heltzer, Executive Secretary, 202-273-1067.

**SUPPLEMENTARY INFORMATION:** Section 102.19(a) of the National Labor Relations Board's rules provides that if a Regional Director declines to issue a complaint, or after withdrawing a complaint refuses to reissue it, the person making the charge may obtain review of the action by filing an appeal (or seeking an extension of time in which to file an appeal) within 14 days of being notified in writing by the Regional Director of the reasons for the decision. Significantly, Section 102.19(a) instructed that the appeal "shall" contain a complete statement setting forth the facts and reasons upon which it is based.

Despite the seemingly mandatory language of Section 102.19(a), the Office of Appeals has, for many years, accepted the "Appeal" form (Form 4767) attached to the Regional Director's dismissal letter as an appeal and sent acknowledgement to the parties based on a timely filing of such form. The policy was developed in response to the reality that many individual appellants do not have the language skills to perfect a more traditional appeal. Quite often, individuals without benefit of counsel have merely sent the form as indicative of an intent to appeal. These individuals apparently believe that they have perfected an appeal by sending in the form officially attached to the Region's dismissal letter. Since seeking review is the last recourse for a charging party

whose charge has been dismissed, the Office of Appeals has maintained a policy that reflects a liberal exercise of discretion in order to afford appeal rights to the broadest population. Although an appeal is more effective if the party seeking review explains the basis for the disagreement with the Region's disposition, failure to include such a statement has not been considered by the Office of Appeals a basis for rejecting an otherwise timely filed appeal. In *Grand Rapids Gravel Company, JD-114-02* (issued November 22, 2002),<sup>1</sup> an administrative law judge specifically rejected the assumption "that the filing of a notice of appeal is legally tantamount to the filing of the actual appeal." Skip op. p.20. In order to avoid future challenges concerning the viability of an appeal based only on a notice, the rules and regulations and related forms are being revised to reflect the actual practice. Because of the obvious utility of such a statement, the General Counsel believes most charging parties will continue to submit them, even if it is not mandatory. Once a case is appealed, the same level of review is afforded despite the brevity of an appeal. Because the current practice is fairer to individual, unrepresented charging parties, the language applicable to the procedures of filing an appeal has been revised to reflect that practice and to make the public aware of the actual practice.

For these reasons, the General Counsel is eliminating the requirement that a complete and separate statement must be submitted in order to constitute an appeal from the Regional Director's refusal to issue, or reissue, a complaint.

#### Administrative Procedure Act

Because the change involves rules of agency organization, procedure or practice, the Agency is not required to publish for comment under Section 553 of the Administrative Procedure Act (5.U.S.C. 553).

#### Regulatory Flexibility Act

Because no notice of proposed rule-making is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) pertaining to regulatory flexibility analysis do to apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these changes will not have a significant economic impact on small business entities since the changes

<sup>1</sup> Cases No. 7-CA-44094 and 7-CA-44211. The Board adopted the decision on February 27, 2003, without exceptions being filed.