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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF - 417; Ref. Notice No. 871]

RIN: 1512-AB80

Extension for Johannisberg Riesling; Additional Grape Varieties (98R-406P)

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

ACTION: Treasury Decision, final rule.

SUMMARY: This final rule amends the wine labeling regulations to allow use of the term "Johannisberg Riesling" on American wine labels for an additional seven years. The effect of this amendment allows American wineries additional time to educate consumers regarding the name change and allow for transitional time regarding the labeling, packaging and merchandising of Johannisberg Reising. Additionally, ATF is adding two new names, Traminette and Aglianico, to the list of prime grape variety names for use in designating American varietal wines.

EFFECTIVE DATE: October 1, 1999.

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

SUPPLEMENTARY INFORMATION:**Background***Law and Regulations*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. § 205(e), vests broad authority in the Director, as a delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer, and to provide the consumer with adequate information as to the identity and quality of the product. Regulations which implement the provisions of section 105(e) as they relate to wine are set forth in title 27, Code of Federal Regulations, Part 4.

The regulations at section 4.23(b) provide that a grape variety name may be used as the type designation of a grape wine if not less than 75 percent of the wine is derived from grapes of that variety. The wine must be labeled with an appellation of origin. Under section 4.23(d), a bottler may use two or more grape variety names as the type designation of a grape wine if all the wine is made from grapes of the labeled varieties, and the percentage of the wine derived from each grape variety is shown on the label.

T.D. ATF-370

In 1996, ATF issued a final rule containing a list of approved prime grape variety names which may be used as the designation for American wines. The purpose of creating a list of prime grape variety names was to

help standardize wine label terminology and prevent consumer confusion by reducing the large number of synonyms for grape varieties that were previously used for labeling American wines.

The rule contained two other lists of alternative names that could be used as grape wine designations until January 1, 1997, or January 1, 1999. Finally, the rule also contained a procedure by which interested persons could petition the Director for the addition of names to the list of prime grape names.

Johannisberg Riesling

In T.D. ATF-370, ATF announced that the name "Johannisberg Riesling" should no longer be permitted as a grape variety designation on American wines. The true name for this grape variety is simply "Riesling." However, in the United States, wineries had long used the terms "Johannisberg Riesling" and "White Riesling" to distinguish the true Riesling grape from other grapes that were incorrectly designated as "Riesling."

The final rule listed "Riesling" as the prime name for this grape. The term "White Riesling" was listed as a synonym for "Riesling." This term is used internationally as a designation for this wine, and is also the botanical name for this grape.

The final rule placed the name "Johannisberg Riesling" as an alternative name that could be used only to label American wines bottled prior to January 1, 1999. ATF noted that "Johannisberg Riesling" is not the

correct name for this grape variety. Furthermore, "Johannisberg" is a German geographic term, and the name of a specific winegrowing region within Germany. Since the final rule authorized use of the name Riesling, standing by itself, as the prime name for wine made from this grape, 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." Owing to the necessity to prepare new packaging and marketing materials, its use was authorized for wines bottled prior to January 1, 1999.

Petition

ATF subsequently received a petition from the law firm of Buchman & O'Brien, filed on behalf of trade associations representing United States wineries. The petition asked ATF to extend the phase-out period for the term Johannisberg Riesling for an additional seven years to January 1, 2006.

The petition provided several reasons for extending the phase-out date. Despite the fact that ATF made it clear in the notices issued prior to T.D. ATF-370 that there was significant controversy surrounding the term Johannisberg Riesling, the petition alleged that ATF failed to provide the industry with notice that it was phasing out the term. The petitioner also cited the 10 year phase-out period in the recently published Treasury decision relating to Gamay Beaujolais as support for extending the period. The petition asserted that because the Johannisberg Riesling designation had been in documented commercial use for over 100 years, an additional seven

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.

The petitioners also submitted a letter from the Deutsches Weininstitut GmbH in support of the extension. Letters were also submitted from several wineries, including Stimson Lane Vineyards & Estates ("Stimson Lane") setting forth the reasons for an extension. Stimson Lane noted that in the 1960s and 1970s, "many inferior riesling products were being produced in the United States . . . To overcome the stigma that had become associated with these various rieslings, we and other producers focused our attention and brand investments on the term Johannisberg Riesling to refer to a medium-dry, highly complex wine."

Stimson Lane argued that it would take several years to educate American consumers that the term "Riesling", standing alone, now designates the same wine previously known as "Johannisburg Riesling." In fact, Stimson Lane suggested that the mere prospect was so "overwhelming and complex that the industry has not even begun to agree how they are going to accomplish this." They noted that the term "Johannisberg Riesling" had been used for more than 100 years, and has sales of 36,000,000 bottles per year. Accordingly, an additional seven years would provide a more reasonable phase-out period.

The petition also included a letter from ELGIN, a marketing communications company, which 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 the Datsun brand name to Nissan. ELGIN asserted that this change in brand name 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.

Notice No. 871

In response to the petition, ATF issued Notice No. 871 on January 6, 1999 (64 FR 813). In the notice, ATF proposed extending the phase-out period for an additional seven years. We sought comments on the addition of four grape variety names to the list of prime names.

ATF also issued a rule that temporarily extended the effective date for phasing out the use of "Johannisberg Riesling" on American wine labels. See T.D. ATF-405 (64 FR 753). The date was deferred until September 30, 1999, so that ATF would have time to evaluate the comments received in response to the notice of proposed rulemaking. ATF stated that the proposed extension of the phase-out period did not signify any change in ATF's position regarding the eventual removal of "Johannisberg Riesling" from the list of prime names.

Comments Received in Response to Notice No. 871

ATF received nine comments in response to Notice No. 871. Six comments were in favor of allowing the continued use of the designation "Johannisberg Riesling" on American wine labels for an additional seven years. One comment flatly opposed any extension, while another comment suggested that a two-year extension would be more appropriate. The ninth comment addressed semigeneric designations.

Comments in Favor of the Proposed Extension

Comments in favor of the proposed extension were received from the President's Forum of the Beverage Alcohol Industry, Sand Castle Winery, Stimson Lane Vineyards and Estates, the California Association of Winegrape Growers (CAWG), the Washington Wine Institute and the Washington Wine Commission, and Buchman & O'Brien.

Several commenters stated that an insufficient phase-out period would have a significant economic impact on many growers and vintners. For example, the comment from CAWG stated that the proposed extension was consistent with actions taken by ATF with respect to other labeling terms, such as Gamay Beaujolais, and that "[g]iven the huge investment made by growers and vintners in developing markets for our products, we believe the transition time provided by this proposal is appropriate and fair."

A comment on behalf of the Washington Wine Institute and Washington Wine Commission noted the "serious economic consequences"

to Washington growers and vintners that would result from a shorter phase-out period. The comment stated that "Because 95% of all Riesling wine has been sold in the US as Johannisberg Riesling, we need every minute of the proposed extension period to educate our consumers in the hope that we can minimize ultimate damages to the Riesling category."

Other wineries also commented that it would take several years to do the type of consumer education necessary to avoid major defections from their brands. Stimson Lane reiterated in its comment the serious economic consequences that would be associated with having to "jettison this name without the necessary transition period requested in our petition." A comment from Sand Castle Winery reiterated the need to educate the public on the new terminology.

The President's Forum of the Beverage Alcohol Industry reiterated its prior support of the extension, and stated that extension would be in the best interests of consumers and the U.S. wine industry.

JBC International submitted a comment on behalf of CAWG and the Wine Institute. In this comment, it was noted that Wine Institute supported the extension of the phase-out of the term "Johannisberg Riesling." However, the comment stressed that the industry's position with respect to the term "Johannisberg Riesling," which is not a semigeneric designation, "does not indicate any future positions the US industry might take with regard to the use of semi-generic terms."

Comments in Opposition to Proposed Extension

ATF received two comments in opposition to the proposed seven year extension. The National Association of Beverage Importers, Inc. (NABI) suggested that a two year extension would be more appropriate. Coudert Brothers, on behalf of the Deutscher Weinfonds, opposed any extension of the phase-out period.

NABI suggested that further use of the term "Johannisberg Riesling" would be misleading to consumers, since Johannisberg is a place of origin, and the wine does not come from Johannisberg. While they supported a "reasonable" phaseout period for U.S. winemakers, NABI suggested that a 10 year phase-out (the original three years provided by the final rule, plus the proposed seven year extension) was too long.

The NABI comment also supported ATF's original determination in 1996 to set a 3 year phase-out period, and the adequacy of ATF's notice to the wine industry on this issue. Finally, the NABI comment pointed out that German Riesling wines are not labeled as "Johannisberg Riesling" unless the wines were made from grapes grown in the geographic region of Johannisberg.

Coudert Brothers submitted a comment on behalf of the Deutscher Weinfonds ("DW"), a quasigovernmental authority in the Federal Republic of Germany. The comment opposed the proposed extension as unnecessary. Coudert Brothers reiterated that "Johannisberg Riesling" is not a correct

varietal name, and that the term "Johannisberg" is instead a geographic term referencing a district in the Rheingau region of Germany where grapes have been grown for more than a thousand years.

The comment from Coudert Brothers supported the adequacy of ATF's notice on this issue, and suggested that since "Johannisberg Riesling" is not a brand name, the petitioners' analogies to the length of time needed to build consumer recognition of a new brand name were not appropriate.

Finally, the comment from Coudert Brothers noted that the petition had attached a letter in support of the proposed extension from Deutches Weininstitut GmbH. Coudert Brothers asserted that Deutches Wineinstitut is an affiliate of DW, and that after a full review of the facts and history, Deutches Weininstitut had reconsidered its statements in that letter and adopted the position of DW.

Conclusion

After carefully considering the comments on this issue, ATF has decided to extend the phase-out period for an additional seven years. Accordingly, the term may be used on labels of American wines bottled prior to January 1, 2006. We believe that this period of time will allow wineries sufficient time to educate consumers regarding the name change, and to make necessary changes in the labeling, packaging, and merchandising of "Riesling" and "White Riesling" wines.

ATF's statutory mandate under the FAA Act is to regulate the use of terms on wine labels so as to ensure that consumers are not misled, but instead are adequately informed as to the identity of the wine. We stand behind the reasons set forth in T.D. ATF-370 for discontinuing the use of "Johannisberg Riesling" as a prime name for a grape variety. It is not the correct name for the variety, and there are two better names ("Riesling" and "White Riesling") that are recognized throughout the world, and which do not contain the geographic reference "Johannisberg."

Nonetheless, the vintners and grape growers affected by this decision have made a persuasive case that American consumers still associate the name "Johannisberg Riesling" with the true Riesling grape in the United States. American consumers may not associate the term "Riesling," standing by itself, with the wine that has been labeled for so many years as "Johannisberg Riesling."

It is reasonable to allow the industry an additional seven years to educate consumers as to the true meaning of the "Riesling" and "White Riesling" varietal designations. By the end of this period, American consumers will have sufficient information about the product so that they will be able to make an educated choice once the labeling terminology changes.

Two commenters suggested that ATF should not further perpetuate the use of a misleading geographic term as a varietal name. While ATF

agrees that the name "Johannisberg Riesling" should be phased out, it does not agree that its continued use for another seven years will mislead consumers. It should be noted that wines labeled with a varietal designation must also bear an appellation of origin. See 27 C.F.R. § 4.23(a). Thus, the labels for "Johannisberg Riesling" wines will clearly indicate the true geographic origin of the wines. Accordingly, we do not believe that this limited extension of the phase-out period will result in consumer confusion.

Traminette and Aglianico

In Notice No. 871, ATF proposed to add the names "Traminette" and "Aglianico" to the list of approved prime names in § 4.91. As discussed in further detail in the notice, ATF was provided with sufficient evidence to satisfy the requirements under § 4.93. No comments were received regarding these varietal names. Accordingly, ATF is amending § 4.91 to include "Traminette" and "Aglianico" in the list of approved prime names for grape varieties.

Vernaccia and Counoise

In Notice No. 871, ATF also sought additional comments regarding the inclusion of "Vernaccia" and "Counoise" as prime names in § 4.91. No comments were received on either of these names.

Millbrook Winery petitioned ATF for approval of "Vernaccia" as a prime name. Millbrook's petition stated that they obtained Vernaccia cuttings from the foundation Plants Materials Service at the University of

California at Davis several years ago, and have cultivated this grape in their vineyards.

As we stated in Notice No. 871, the available literature indicates that the name "Vernaccia" is associated with several unrelated Italian grape varieties, including Vernacci di Oristano, Vernacci di San Gimignano, Vernaccia di Serrapetrona, and Vernaccia Trentina. These varieties include both green and black grapes, and are used in making distinctively different red, white, and sparkling wines.

It was unclear from the petition which "Vernaccia" grape was actually contained in the FPMS collection and grown in U.S. vineyards. Accordingly, ATF sought information on this issue in the notice of proposed rulemaking. However, no comments were submitted. In the absence of a positive identification as to which "Vernaccia" grape is being grown in the United States, the requirements of § 4.93 have not been met with respect to this name. Accordingly, ATF is not adding "Vernaccia" to the list of prime names in section 4.91.

Eberle Winery in Paso Robles, California, petitioned ATF to list "Counoise" in § 4.91. Although this is a well-documented red variety from the Rhone region of France, ATF had insufficient information to determine whether "Counoise" is suitable for wine production in the United States, or the extent to which "Counoise" may be grown domestically.

Accordingly, ATF solicited information on the domestic cultivation of the "Counoise" grape. No comments on this issue were received. Since the requirements of § 4.93 have not been met regarding this grape name, we are not amending § 4.91 to add the name "Counoise."

Trousseau vs. Bastardo

Section 4.91 currently 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 bottled after January 1, 1997. Trousseau is a French name for the grape, while Bastardo is the Portuguese name. ATF was asked 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 received no comments on this issue. Accordingly, ATF sees no reason to overturn the decision made in T.D. ATF-370. Trousseau will remain the prime name for this grape.

Paperwork Reduction Act

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

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 this final rule does not (1) have significant secondary or incidental effects on a substantial number of small entities; or (2) I impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial entities.

Executive Order 12866

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

Drafting Information

The principal author of this document is Ms. Teri Byers, Regulations Division, Bureau of Alcohol, Tobacco and Firearms. However, other personnel within ATF and the Treasury Department participated in developing this document.

List of Subject 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.

The following grape variety names have been approved by the Director for use as type designations for American wines. When more than one name may be used to identify a single variety of grape, the synonym is shown in parentheses following the prime name. Grape variety names may appear on labels of wine in upper or in lower case, and may be spelled with or without the hyphens or diacritic marks indicated in the following list.

* * *

Aglianico

* * *

Traminette

* * *

Par. 3. Section 4.92 is amended by removing the name "Johannisberg Riesling" from 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.

<u>Alternative Name</u>	<u>Prime Name</u>
<u>Cabernet</u>	<u>Cabernet Sauvignon</u>
<u>Grey Riesling</u>	<u>Trousseau gris</u>
<u>Muscat Frontignan</u>	<u>Muscat blanc</u>
<u>Muscat Pantelleria</u>	<u>Muscat of Alexandria</u>
<u>Napa Gamay</u>	<u>Valdiguié</u>
<u>Pinot Saint George</u>	<u>Négrette</u>
<u>Sauvignon vert</u>	<u>Muscadelle</u>

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

<u>Alternative Name</u>	<u>Prime Name</u>
<u>Johannisberg Riesling</u>	<u>Riesling</u>

Signed:

Director

Approved:

Deputy Assistant Secretary
(Regulatory, Tariff & Trade Enforcement)