

to appoint the majority of the members of the governing body of E. E uses the \$103 million of sale proceeds of the 2004 bonds to defease the bonds of which D was the obligor. All of the defeased bonds will be redeemed on the first date on which they may be redeemed. In addition, E treats the 2004 bonds as financing the same assets as the defeased bonds. The 2004 bonds constitute a refunding issue because the obligor of the defeased bonds (D) obtains in the transaction the right to appoint the majority of the members of the governing body of the obligor of the 2004 bonds (E). See paragraph (d)(2)(ii)(F) of this section.

*Example 3. Relinquishment of control.* The facts are the same as in *Example 2*, except that D does not obtain the right, directly or indirectly, to appoint any member of the governing body of E. Rather, E obtains the right both to approve and to remove without cause each member of the governing body of D. In addition, prior to being acquired by E, D experiences financial difficulties as a result of mismanagement. Thus, as part of E's acquisition of D, all of the former members of D's governing body resign their positions and are replaced with persons appointed by E. The 2004 bonds do not constitute a refunding issue.

\* \* \* \* \*

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 02-8655 Filed 4-5-02; 2:41 pm]

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## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Part 4

[Notice No. 941]

RIN 1512-AC65

#### Proposal To Recognize Synonyms for Petite Sirah and Zinfandel Grape Varieties (2001R-251P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms is proposing two amendments to its list of prime grape variety names used to designate American wines. The first amendment would recognize the name "Durif" as a synonym for the Petite Sirah grape, while the second would recognize the name "Primitivo" as a synonym for the Zinfandel grape. The Bureau's proposal is based on recent DNA research into the identity of these grapes.

**DATES:** Written comments must be received by June 10, 2002.

**ADDRESSES:** Send written comments to: Chief, Regulations Division, Bureau of

Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221 (Attn: Notice No. 941). See the "Public Participation" section of this notice for alternative means of commenting.

Copies of the proposed regulation, background materials, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, Regulations Division, 111 W. Huron Street, Room 219, Buffalo, NY 14202-2301; telephone (716) 434-8039.

#### SUPPLEMENTARY INFORMATION:

##### Background

##### *What Is ATF's Authority To Regulate Grape Variety Names?*

Under the Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*) (FAA Act), wine labels must provide the consumer with "adequate information as to the identity" of the product. The FAA Act also requires that the information appearing on wine labels not mislead the consumer. In addition, the Act authorizes the Bureau of Alcohol, Tobacco and Firearms (ATF) to issue regulations to carry out the Act's provisions.

Regulations concerning wine labeling, including those that designate prime grape variety names, are contained in 27 CFR part 4, Labeling and Advertising of Wine. Under 27 CFR 4.23(b) and (c), a wine bottler may use an approved grape variety name as the designation of a wine if at least 75 percent of the wine (51 percent in the case of wine made from *Vitis labrusca* grapes) is derived from that grape variety. Under § 4.23(d), a bottler may use two or more approved grape variety names as the designation of a wine if all of the grapes used to make the wine are of the labeled varieties and the percentage of the wine derived from each grape variety is shown on the label.

Treasury Decision ATF-370 (T.D. ATF-370), issued on January 8, 1996 (61 FR 522), adopted a list of grape variety names that ATF determined to be appropriate for use in designating American wines. The list of prime grape variety names and their synonyms appears at § 4.91, while additional alternative grape names temporarily authorized for use are listed at § 4.92. Synonyms are as acceptable as prime names and can stand alone on a label as a wine's designation. We believe the

listing of approved grape variety names for American wines will help standardize wine label terminology, provide important information about the wine, and prevent consumer confusion.

##### *How Did ATF Decide Which Names To Include in § 4.91?*

The original prime grape variety name list was created through a two-part research and rulemaking process. In 1982, ATF established the Winegrape Varietal Names Advisory Committee whose members included wine industry members and academic viticultural researchers. The Committee reviewed hundreds of grape varietal names and synonyms then used in the production of American wine, and, in 1984, issued a report listing those names it determined were the most accurate and appropriate for use on American wine labels.

Using this report as a basis for rulemaking, ATF published Notice 581 on February 4, 1986 (51 FR 4392), followed by Notice 749 on September 3, 1992 (57 FR 40380), soliciting comments from the public on the proposed list. After reviewing the more than 200 comments received in response to Notices 581 and 749, ATF published T.D. ATF-370, which added the list of American grape variety names to 27 CFR part 4, Labeling and Advertising of Wine.

T.D. ATF-370 also established a process for the approval of new grape variety names. Under § 4.93, any interested person may petition ATF to add additional grape varieties to the list of prime grape names. Under the regulations, petitioners should submit evidence that:

- The grape variety is accepted;
- The name identifying the grape variety is valid;
- The variety is used or will be used in winemaking; and
- The variety is grown and used in the United States.

Since the publication of T.D. ATF-370, we have added several grape names to the prime grape name list in § 4.91 through this petition process.

#### Evidence Supporting Proposed Revisions

##### *Petite Sirah/Durif*

The names "Petite Sirah" and "Durif" were each listed as separate prime grape variety names in T.D. ATF-370. ATF originally proposed these names as synonyms in Notice 749, based on a widely held belief that these were two names for the same grape variety. However, Dr. Carole Meredith of the Department of Viticulture and Enology,

University of California at Davis (UC-Davis), commented in response to Notice 749 that she had evidence that Petite Sirah and Durif may not be the same variety. Dr. Meredith stated that her preliminary DNA research on Petite Sirah vines in UC-Davis' collection indicated that the name "Petite Sirah" was being used for more than one grape variety. She concluded that it would be premature to accept Petite Sirah and Durif as synonyms. In response to these comments, we listed Petite Sirah and Durif as separate prime grape variety names in T.D. ATF-370 and not as synonyms. However, we stated we would continue to seek evidence regarding the true identity of the grape called Petite Sirah.

Dr. Meredith has since completed her DNA research of California Petite Sirah vines, and published her findings in an article titled "The Identity and Parentage of the Variety Known in California as Petite Sirah," in the *American Journal of Enology and Viticulture*, Vol. 50, No. 3, 1999. Dr. Meredith used DNA marker analysis to determine the identity of Petite Sirah vines in public collections and in commercial vineyards in California. This analysis revealed that a majority of the Petite Sirah vines were identical to Durif. Of 13 UC-Davis vines labeled Petite Sirah, 9 were identified as Durif. Of 53 commercial plants examined, 49 were identified as Durif. The remaining vines were found to be Pinot noir, Peloursin, or Syrah. Dr. Meredith concluded that these vines, most of which were obtained from old vineyards, had been misidentified, probably as the result of planting and labeling errors made decades ago.

When we contacted Dr. Meredith to discuss her study, she stated that she now supports identifying Petite Sirah and Durif as synonyms. She further commented that although Durif is the variety's original name, Petite Sirah is the name commonly used in the United States and is equally valid as the grape's name. Based on Dr. Meredith's research, ATF is proposing to amend its list of prime grape variety names to make "Petite Sirah" and "Durif" synonyms for the same grape.

#### *Zinfandel/Primitivo*

ATF listed "Zinfandel" and "Primitivo" as separate prime grape varieties in T.D. ATF-370, basing its decision on the available evidence and on comments received during the rulemaking process. Among the commenters was Dr. Carole Meredith of UC-Davis. She reported that her DNA research on Zinfandel and the Italian grape Primitivo showed them to have

identical DNA "fingerprints." However, her Primitivo research up to that point had been limited to two Italian samples that, she noted, may not have represented the full range of Primitivo cultivars. She further noted that Italians seemed to use Primitivo as a generic term for more than one grape variety. Because the name "Primitivo" was being used for grape varieties not identical to Zinfandel, ATF decided that the two grape names could not be used interchangeably and must be listed as separate varieties.

Since the publication of T.D. ATF-370 in 1996, Dr. Meredith and others have conducted additional research into the identity of Zinfandel. Also, other regulatory bodies, notably the European Union, have recognized Zinfandel and Primitivo as names for the same grape. European Commission Regulation No. 2770/98, which governs the use of grape variety names within the European Union, recognizes the name "Zinfandel" as a synonym for the Primitivo grape. Italian Primitivo growers may therefore label their wine as Zinfandel, while under § 4.91 American Zinfandel growers may not label their wine as Primitivo.

In an effort to clarify this issue, we contacted Dr. Meredith and asked if recent research supported recognizing Zinfandel and Primitivo as synonymous names for the same grape variety. She stated that her DNA profiling research, along with research conducted in Australia and Italy, has shown conclusively that Primitivo samples from Italy and Zinfandel samples from California are the same grape variety. She further commented that, because Primitivo and Zinfandel have been propagated independently for some time, some clonal divergence has occurred. This has resulted in small differences, such as berry size or fruit composition, that she believes may be significant for winemaking. However, she commented, these intravariety differences are common among other old and geographically dispersed varieties like Pinot noir or Syrah. She therefore concluded that Primitivo and Zinfandel should be classified as synonyms.

Based on current evidence, we propose to amend the list of prime grape variety names to make "Primitivo" and "Zinfandel" synonyms for the same grape variety. Because both names are well established, we believe they should be considered equally valid. However, we welcome comments on this subject.

#### **Public Participation**

ATF requests comments from all interested parties on the proposals

contained in this notice. We specifically request comments on the clarity of this proposed rule and how it may be made easier to understand.

#### *What Is a Comment?*

In order for a submission to be considered a "comment," it must clearly indicate a position for or against the proposed rule or some part of it, or express neutrality about the proposed rule. Comments that use reasoning, logic, and, if applicable, good science to explain the commenter's position are most persuasive in the formation of a final rule.

To be eligible for consideration, comments must:

- Contain your name and mailing address;
- Reference this notice number;
- Be legible and written in language generally acceptable for public disclosure;
- Contain a legible, written signature if submitted by mail or fax; and
- Contain your e-mail address if submitted by e-mail.

To assure public access to our office equipment, comments submitted by e-mail or fax must be no more than three pages in length when printed on 8 1/2" by 11" paper. Comments submitted by mail may be any length.

#### *How May I Submit Comments?*

*By Mail:* You may send written comments by mail to the address shown above in the **ADDRESSES** section of this notice.

*By Fax:* You may submit comments by facsimile transmission to (716) 434-8041. We will treat faxed transmissions as originals.

*By E-Mail:* You may submit comments by e-mail by sending the comments to [nprm@atfhq.atf.treas.gov](mailto:nprm@atfhq.atf.treas.gov). We will treat e-mailed transmissions as originals.

*By On-line Form:* You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF Internet web site at <http://www.atf.treas.gov/alcohol/rules/index.htm>. We will treat comments submitted via the web site as originals.

#### *How Does ATF Use the Comments?*

We will carefully consider all comments we receive on or before the closing date. We will also carefully consider comments we receive after that date if it is practical to do so, but we cannot assure consideration for late comments. We will not acknowledge receipt of comments or reply to individual comments. We will summarize and discuss pertinent comments in the preamble to any

subsequent notices or the final rule published as a result of the comments.

Can I Review Comments Received?

You may view copies of the comments on this notice of proposed rule making by appointment at the ATF Reference Library, Office of Liaison and Public Information, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927-7890. You may also request copies of comments by filing a Freedom of Information Act (FOIA) request. For instructions on filing a FOIA request, please refer to the Internet address: http://www.atf.treas.gov/about/foia.htm or call (202) 927-8480.

For the convenience of the public, ATF will post comments received in response to this notice on the ATF web site. All comments posted on our web site will show the name of the commenter, but will not show street addresses, telephone numbers, or e-mail addresses. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the library or through FOIA requests, as noted above. To access online copies of the comments on this rulemaking, visit http://www.atf.treas.gov/, and select "Regulations," then "Notices of proposed rulemaking (Alcohol)" and this notice. Click on the "View Comments" button.

Will ATF Keep My Comments Confidential?

ATF cannot recognize any material in comments as confidential. All comments and materials may be disclosed to the public in the ATF Reading Room or in response to a FOIA request. We may also post the comment on our web site. (See "Can I Review Comments Received?") Finally, we may disclose the name of any person who submits a comment and quote from the comment in the preamble to a final rule on this subject. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments.

Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The provisions of 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 notice because no requirement to collect information is proposed.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

ATF certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. We expect no negative impact on small entities. We are not proposing new requirements. Accordingly, the Act does not require a regulatory flexibility analysis.

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

This is not a significant regulatory action as defined by Executive Order 12866. Therefore, the order does not require a regulatory assessment.

Drafting Information

The principal author of this document is Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

Authority and Issuance

Accordingly, 27 CFR part 4, Labeling and Advertising of Wine, is proposed to be amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Para. 2. Section 4.91 is amended by making the following additions to the list of prime grape names:

- a. "Petite Sirah" is added in parenthesis behind "Durif";
b. "Durif" is added, in parenthesis, behind "Petite Sirah";
c. "Zinfandel" is added, in parenthesis, behind "Primitivo"; and
d. "Primitivo" is added, in parenthesis, behind "Zinfandel."

The amendments will read as follows:

§ 4.91 List of approved prime names.

Table with 5 columns of asterisks and labels: Durif (Petite Sirah), Petite Sirah (Durif), Primitivo (Zinfandel), Zinfandel (Primitivo)

Signed: February 18, 2002.

Bradley A. Buckles, Director.

Approved: March 11, 2002.

Timothy E. Skud,

Acting Deputy Assistant Secretary, (Regulatory, Tariff & Trade Enforcement).

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01-02-031]

RIN 2115-AA97

Safety Zone; Fore River Channel—Weymouth Fore River—Weymouth, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the Weymouth Fore River in Weymouth, MA, along the main shipping channel, to permit the construction of a temporary bridge over the river adjacent to the existing Route 3A bridge. The 6-day, safety zone enforcement periods we propose would begin this year on June 10, July 15, and July 29 and if the contractor needs additional time to complete the prescribed work, 6-day contingency enforcement periods would begin June 24, August 12, and August 26, 2002. During enforcement periods, the safety zone, which is necessary for the protection of life and property, would temporarily close all waters of the Weymouth Fore River in the area along the main shipping channel, between the fendering system of the bridges, and approximately 200 yards upstream and 100 yards downstream of the Route 3A bridge.

DATES: Comments and related material must reach the Coast Guard on or before May 10, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office Boston, 455 Commercial Street, Boston, MA. Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Boston between 8 A.M. and 3 P.M., Monday through Friday, except Federal holidays.