

Commission would revoke acceptance of the 1986 UFOC Guidelines in the near future. Indeed, Section 265 of the amended UFOC Guidelines states NASAA's view that the amended UFOC should take effect "no later than January 1, 1995." Although the Commission did not adopt the January 1, 1995, due date set out in the amended UFOC Guidelines, franchisors were clearly on notice that the franchise registration states preferred an early conversion from the 1986 UFOC to the amended UFOC Guidelines.

For these reasons, the Commission adopts January 1, 1996, as the revocation date for acceptance of disclosures prepared under the 1986 UFOC Guidelines. UFOC disclosures required to be prepared, amended, revised, or filed on and after January 1, 1996, must satisfy the requirements of the 1993 UFOC Guidelines as adopted by NASAA on April 25, 1993, and approved by the Commission on December 30, 1993 (58 FR 69,224) for use in compliance with the Franchise Rule.

List of Subjects in 16 CFR Part 436

Advertising, Business and industry, Franchising, Trade practices.

Authority: 15 U.S.C. 42-58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95-24678 Filed 10-3-95; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[TD ATF-368 ; Re: Notice No. 812]

RIN: 1512-AA07

Puget Sound Viticultural Area (94F-019P)

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

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in the State of Washington to be known as "Puget Sound." The petition for this viticultural area was filed by Gerard and Jo Ann Bentryn, Owners-Winemakers of Bainbridge Island Vineyards.

ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to

designate the specific areas where the grapes used to make the wine were grown and enables consumers to better identify the wines they purchase.

EFFECTIVE DATE: October 4, 1995.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8230.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations 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. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2), Title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale, and;

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF received a petition from Gerard and Jo Ann Bentryn of Bainbridge Island Vineyards & Winery in Bainbridge Island, Washington, proposing to establish a new viticultural area within the State of Washington to be known as "Puget Sound." Puget Sound (or the "Sound") is an inlet of the Pacific Ocean in Northwestern Washington, extending about 100 miles south from Admiralty Inlet and Juan de Fuca Strait to Olympia. The viticultural area lies within the land basin surrounding the Sound. Eight letters of support from wineries and vineyards located within the area were included with the petition. These letters of support were from: Mount Baker Vineyards, Whidbey Island Winery, Lopez Island Vineyards, Inc., E.B. Foote Winery, Blue Apple Vineyard, Molly's Vineyard, Coolen Wine Cellar, and Johnson Creek Winery/Alice's Restaurant.

The Puget Sound viticultural area is located in the Northwestern portion of Washington State. The entire Puget Sound watershed contains 13,100 square miles of land, 150 square miles of fresh water, and 2,500 square miles of saltwater. The Puget Sound viticultural area contains approximately 55% of the watershed's land area and water or 7,150 square miles of land and 1,500 square miles of water for a total area of 8,650 square miles. It has a maximum length of 190 miles from north to south and 60 miles from east to west, although it is most often less than 45 miles wide.

Notice of Proposed Rulemaking

In response to Gerard and Jo Anne Bentryn's petition, ATF published a notice of proposed rulemaking, Notice No. 812, in the Federal Register on May 22, 1995 [60 FR 27060], proposing the establishment of the Puget Sound viticultural area. The notice requested comments from all interested persons by July 6, 1995.

Comments on Notice of Proposed Rulemaking

ATF did not receive any letters of comment in response to Notice No. 812. Eight letters of support from wineries and vineyards located within the area were included with the petition as discussed above. Accordingly, this final rule establishes a Puget Sound viticultural area with boundaries identical to those proposed in Notice No. 812.

Evidence That the Name of the Area is Locally or Nationally Known

The name "Puget Sound" was established in 1791 by Captain George

Vancouver when he named, explored, and mapped the area while in service to the British Admiralty. His maps and those of subsequent explorers, settlers and government agencies show the Puget Sound area with the countryside drained by rivers flowing into Puget Sound. Numerous references exist indicating the general use of the name "Puget Sound" to refer to the area. The petitioners included copies of title pages of various publications, guide and tour book references, public telephone book listings, and Federal and State agency maps, to illustrate the use of the name. They also submitted an excerpt from, "Touring the Washington Wine Country," 1993, published by the Washington Wine Commission. This publication discusses grape growing in western Washington and states that, "[t]he expansive Puget Sound basin offers a temperate climate that rarely suffers from prolonged freezing weather in the winter and quite often enjoys a long and warm summer growing season."

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

The viticultural area is located on the land mass surrounding Puget Sound and known as the Puget Sound basin. The petitioners explained that there are no exacting and commonly understood boundaries for the basin. The basin boundaries, for example, can extend up to the crests of the Olympic and Cascade mountain ranges to include the entire watershed. However, individuals in western Washington State commonly refer to the lowland areas surrounding the Sound as the Puget Sound basin. It is these lowland areas that the petitioners feel are suited for viticulture.

The petitioners stated that, "Puget Sound has boundaries determined absolutely by the forces of nature, and recognized by common cultural use. We merely used those public roads that most closely fit within those natural boundaries of terminal moraine [accumulation of boulders, stones, or other debris carried and deposited at the edges of the farthest reaches of a glacier's advance], rainfall lines (isohyets), and temperature to draw enforceable borders." [Definition added.] The petitioners also state that, "[t]he * * * viticultural area is smaller than the basin because not all of the basin is suitable for viticulture. Areas with elevations greater than 600 feet are generally too wet or too cold in this region so they have been excluded."

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, Etc.) Which Distinguish Viticultural Features of the Area From Surrounding Areas

Climate

The climate of Puget Sound is well differentiated from that of surrounding areas. The Olympic Mountains to the west and the Cascade Mountains to the east protect the region from the cool wet influence of the Pacific Ocean and the extreme summer and winter temperatures of eastern Washington. The Strait of Juan de Fuca and associated waterways separate Puget Sound from the cooler summer areas to the north. Foothills to the south of the Puget Sound viticultural area are the limit of the area influenced by the moderating effect of the waters of the Sound. Both summer and winter temperatures are significantly cooler in the hills and mountains to the west, south, and east.

The western, eastern and southern boundaries of the Puget Sound viticultural area closely follow the line formed by a growing season of 180 days and the 60 inch isohyet of annual precipitation. All areas within the viticultural area below 600 feet in elevation have a 180 day or longer growing season with 60 inches or less of annual rainfall, and 15 inches or less of rainfall in the months of April to October (inclusive).

Areas outside of, but adjacent to, the viticultural area to the west, south, and east have a growing season of generally less than 180 days, with more than 60 inches of annual rainfall, and more than 15 inches of rainfall in the months of April to October (inclusive). Examples of weather recording stations surrounding the Puget Sound region are as follows: To the west is Forks, with a growing season of 175 days and an annual precipitation of 118 inches (38 inches April to October). To the southeast is Paradise Ranger Station (Mount Rainier National Park), with a growing season of 50 days and an annual precipitation of 106 inches (39 inches April to October). To the east is Diablo Dam with a growing season of 170 days and an annual precipitation of 72 inches (23 inches from April to October). To the northeast is Heather Meadows Recreational Area (Mt. Baker National Forest) with a growing season of 150 days and an annual precipitation of 110 inches (44 inches from April to October).

The northerly border of the viticultural area closely conforms to the temperature boundary of areas experiencing a mean high temperature

in the warmest month (July) of 72 degrees Fahrenheit or greater. Cool air from the Pacific Ocean moves east through the Strait of Juan de Fuca during the growing season limiting the reliable ripening of winegrapes in the areas west of the Elwha River and outside the line formed by the western boundaries of Clallam, San Juan, and Whatcom Counties and the northern boundary of Whatcom County.

Examples of areas to the northwest of the viticultural area with mean high temperatures in the warmest month which are lower than 72 degrees Fahrenheit are: Forks, Washington, 71 degrees F; Clallum Bay, Washington, 67 degrees F; Victoria, British Columbia, 68 degrees F; and Sidney, British Columbia, 67 degrees F.

Degree Days

Total degree days as measured by the scale developed by Winkler and Amerine of the University of California (Davis) range between 1300 at the northern border, to 2200 in the south. Typical readings are: Friday Harbor 1380, Blaine 1480, Sequim 1310, Port Townsend 1480, Mt. Vernon 1530, Coupeville 1360, Monroe 1820, Bothell 1520, Kent 1940, Seattle (U of W) 2160, Bremerton 1810, Vashon 1730, Grapeview 2010, Puyallup 1770, Tacoma 1940, and Olympia 2160. There is a significant temperature variation from north to south. According to the petitioner, this temperature variation is within a range that will allow the same types of grapes to be grown throughout the area.

Rainfall

Rainfall in the Puget Sound viticultural area is substantially less than in surrounding areas. It ranges from 17 inches annually in the north to 60 inches in the south. Typical amounts are: Friday Harbor 28" Blaine 34", Sequim 17", Port Townsend 18", Mt. Vernon 32", Coupeville 18", Monroe 47", Bothell 40", Kent 38", Seattle (U of W) 35", Bremerton 39", Vashon 47", Grapeview 53", Puyallup 41", Tacoma 37", and Olympia 52". Growing season rainfall ranges from 8 inches in the north to 15 inches in the south. Outside of the boundaries, the rainfall ranges from 70 to 220 inches annually.

Overall, the Puget Sound viticultural area can be characterized as having a growing season of over 180 days, annual degree day averages between 1300 and 2200, and annual rainfall of 60 inches or less.

Soils

Soils in the Puget Sound viticultural area are completely unlike those of the

surrounding upland areas in that they are the result of the advance and withdrawal of the Vashon glaciation. This most recent glaciation (10,000 years ago) coincided at its limits with the eastern, southern, and southwestern boundaries of the viticultural area. The resultant soils are primarily silty to sandy topsoils with scattered small to moderate rounded stones. This is typical of post glacial soils in lowland areas. Areas outside the viticultural area to the west, south and east, were not covered by ice during the Vashon glaciation. Consequently, soils in surrounding areas have entirely different origins and genesis. The primary impact on viticultural conditions by the glaciation of the Puget Sound viticultural area was the development of a semi-permeable cemented subsoil at depths generally from one to ten feet. This subsoil was created by the pressure of one to three thousand feet of overlying ice. The subsoil acts as a storage vehicle for winter rains and allows deep rooted vines to survive the late-summer soil water deficit without irrigation. The surrounding areas which were not glaciated do not share this comparative advantage. The semi-permeable cemented subsoil is the most significant soil factor relative to viticulture in the area.

Topography and Geographical Features

The Puget Sound basin is a large lowland surrounding bodies of salt water called in government reports "Puget Sound" or "Puget Sound and Adjacent Waters." These waters comprise Puget Sound, a long, wide ocean inlet. The basin is cut by many rivers flowing into the Sound. Low rolling hills formed by the deposit and erosion of advancing and retreating glaciers are cut by ravines and stream channels. The dominating natural features are the sound itself and the surrounding mountains. The Olympic mountain range forms the western boundary of the Puget Sound basin. These mountains intercept moist maritime Pacific air and account for the relatively low annual precipitation. The Cascade mountain range forms the eastern boundary of the Puget Sound basin. These mountains protect the basin from the extremely cold winters and hot summers of eastern Washington. Elevations in the basin are primarily between sea-level and 1,000 feet. Isolated hills of up to 4,000 feet occur primarily in the northeast but none of the existing vineyards is above 600 feet in elevation.

Viticulture

The petitioners state that neither *vinifera* nor *labrusca* vines are native to the area; however, they are now grown throughout the basin. In 1872, Lambert Evans established a vineyard on Stretch Island in southern Puget Sound. He sold the fruit in Seattle. In the 1890's a viticulturalist from the east coast named Adam Eckert brought new grape varieties and planted more vineyards on the island. The first bonded winery in Washington State was established there in 1933 by Charles Somers. Known as the St. Charles Winery, it reached a capacity of 100,000 gallons. Viticulture spread throughout the Puget Sound basin as evidenced by the annual reports of the Washington State Department of Agriculture. These primarily *labrusca* plantings were gradually supplanted in most of the basin by *vinifera* plantings from the 1950's to the present. The Washington State Department of Agriculture report entitled, "Washington Agriculture," 1960, reported 2 small areas of grape cultivation outside of Yakima Valley; one of them being "in western Washington in Kitsap county. There along the shores of Puget Sound, grapes have grown satisfactorily for many years." The 1993 publication, "Touring the Washington Wine Country," which is published by the Washington Wine Commission states that, "Small vineyards flourish on Puget Sound's islands * * *" There are now over 50 acres of vineyards in the basin and 25 bonded wineries.

Boundaries

The boundaries of the Puget Sound viticultural area may be found on four 1:250,000 scale U.S.G.S. maps titled: Hoquiam, Washington (1974); Seattle, Washington (1974); Wenatchee, Washington (1971); Victoria, B.C., Can., Wash., U.S. (1974); one 1:25,000 scale map titled: Auburn, Washington (1983); and three 1:24,000 scale maps titled: Buckley, Washington (1993); Cumberland, Washington (1993); and Enumclaw, Washington (1993).

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this rule because no requirement to collect information is proposed.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant impact on a substantial number of small entities. The establishment of a

viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that region.

Accordingly, a regulatory flexibility analysis is not required because this final rule is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action because:

(1) It will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Drafting Information

The principal author of this document is David W. Brokaw, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.151 to read as follows:

§ 9.151 Puget Sound

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

(b) *Approved maps.* The appropriate maps for determining the boundary of the Puget Sound viticultural area are four 1:250,000 scale U.S.G.S. topographical maps, one 1:25,000 scale topographic map, and three 1:24,000 scale topographic maps. They are titled:

(1) Hoquiam, Washington, 1958 revised 1974 (1:250,000)

(2) Seattle, Washington, 1958 revised 1974 (1:250,000)

(3) Wenatchee, Washington, 1957 revised 1971 (1:250,000)

(4) Victoria, B.C., Can., Wash., U.S., 1957 revised (U.S. area) 1974 (1:250,000)

(5) Auburn, Washington, 1983 (1:25,000)

(6) Buckley, Washington, 1993 (1:24,000)

(7) Cumberland, Washington, 1993 (1:24,000)

(8) Enumclaw, Washington, 1993 (1:24,000)

(c) *Boundary.* The Puget Sound viticultural area is located in the State of Washington. The boundaries of the Puget Sound viticultural area, using landmarks and points of reference found on appropriate U.S.G.S. maps, follow.

(1) Beginning where the Whatcom county line comes closest to an unnamed secondary road (referred to in the petition as Silver Lake Road) on the U.S.G.S. map "Victoria," T41N/R6E;

(2) Then south along Silver Lake Road approximately 5.5 miles to its intersection with State Highway 542, T39N/R5E;

(3) Then west and then southwest along State Highway 542 approximately 11 miles to its intersection with State Highway 9, T38N/R5E;

(4) Then south along State Highway 9 approximately 44 miles to its intersection with an unnamed secondary road (referred to in the petition as Burn Road) at the town of Arlington, T31N/R5E;

(5) Then south, southeast along Burn Road approximately 11 miles to its intersection with State Highway 92, T30N/R6E;

(6) Then south along State Highway 92 approximately 3 miles to its intersection with an unnamed light duty road (referred to in the petition as Machias Hartford Road), T29N/R6E;

(7) Then south along Machias Hartford Road approximately 4 miles to its intersection with an unnamed secondary road (referred to in the petition as Lake Roesiger Road), on the U.S.G.S. map "Wenatchee," T29N/R7E;

(8) Then east along Lake Roesiger Road approximately 3.5 miles to its intersection with an unnamed secondary road (referred to in the petition as Woods Creek Road), T29N/R7E;

(9) Then south along Woods Creek Road approximately 10.5 miles to its intersection with U.S. Highway 2 in the town of Monroe, T27N/R7E;

(10) Then west along U.S. Highway 2 approximately 1/2 mile to its intersection with State Highway 203, T27N/R6E;

(11) Then south along State Highway 203 approximately 24 miles to its intersection with an unnamed secondary road (referred to in the petition as Preston-Fall City Road), at the town of Fall City, T24N/R7E;

(12) Then southwest along Preston-Fall City Road approximately 4 miles to its intersection with Interstate Highway 90 at the town of Preston, T24N/R7E;

(13) Then east along Interstate Highway 90 approximately 3 miles to its intersection with State Highway 18, T23N/R7E;

(14) Then southwest along State Highway 18 approximately 7 miles to its intersection with an unnamed secondary road (referred to in the petition as 276th Avenue SE), T23N/R6E;

(15) Then south along 276th Avenue SE approximately 5 miles to its intersection with State Highway 516 at the town of Georgetown, T22N/R6E;

(16) Then west along State Highway 516 approximately 2 miles to its intersection with State Highway 169 at the town of Summit on the U.S.G.S. map, "Seattle," (shown in greater detail on the U.S.G.S. map, "Auburn"), T22N/R6E;

(17) Then south along State Highway 169 approximately 11.5 miles to its intersection with State Highway 410 at the town of Enumclaw on the U.S.G.S. map, "Wenatchee," (shown in greater detail on the U.S.G.S. map, "Enumclaw"), T20N/R6E;

(18) Then southwest approximately 5 miles along State Highway 410 until its intersection with State Highway 165 on the U.S.G.S. map, "Seattle," (shown in greater detail on the U.S.G.S. map, "Buckley"), T19N/R6E;

(19) Then southwest on State Highway 165 until its intersection with State Highway 162 at the town of Cascade Junction on the U.S.G.S. map, "Seattle" (shown in greater detail on the U.S.G.S. Map, "Buckley"), T19N/R6E;

(20) Then southwest along State Highway 162 approximately 8 miles to its intersection with an unnamed secondary road (referred to in the petition as Orville Road E.), T19N/R5E;

(21) Then south along Orville Road E., approximately 8 miles to its intersection with the CMSTP&P railroad at the town of Kapowsin, on the U.S.G.S. map, "Hoquiam," T17N/R5E;

(22) Then south along the CMSTP&P railroad approximately 17 miles to where it crosses the Pierce County line at the town of Elbe, T15N/R5E;

(23) Then west along the Pierce County line approximately 1 mile to the eastern tip of Thurston County, T15N/R5E;

(24) Then west along the Thurston County line approximately 38 miles to where it crosses Interstate Highway 5, T15N/R2W;

(25) Then north along Interstate Highway 5 approximately 18 miles to its intersection with U.S. Highway 101 at the town of Tumwater on the U.S.G.S. map "Seattle," T18N/R2W;

(26) Then northwest along U.S. Highway 101 approximately 18 miles to its intersection with State Highway 3 at the town of Shelton, T20N/R3W;

(27) Then northeast along State Highway 3 approximately 24 miles to where it crosses the Kitsap County line, T23N/R1W;

(28) Then north along the Kitsap County line approximately 3 miles to the point where it turns west, T23N/R1W;

(29) Then west along the Kitsap County line approximately 11 miles to the point where it turns north, T23N/R3W;

(30) Then continuing west across Hood Canal approximately 1 mile to join with U.S. Highway 101 just south of the mouth of an unnamed creek (referred to in the petition as Jorsted Creek), T23N/R3W;

(31) Then north along U.S. Highway 101 approximately 40 miles to the point where it turns west at the town of Gardiner on the U.S.G.S. map "Victoria," T30N/R2W;

(32) Then west along U.S. Highway 101 approximately 32 miles to where it crosses the Elwha River, T30N/R7W;

(33) Then north along the Elwha River approximately 6 miles to its mouth, T31N/R7W;

(34) Then continuing north across the Strait of Juan de Fuca approximately 5

miles to the Clallam County line, T32N/R7W;

(35) Then northeast along the Clallam County line approximately 14 miles to the southwestern tip of San Juan County, T32N/R4W;

(36) Then northeast along the San Juan County line approximately 51 miles to the northern tip of San Juan County, T38N/R3W;

(37) Then northwest along the Whatcom County line approximately 19 miles to the western tip of Whatcom County, T41N/R5W;

(38) Then east along the Whatcom County line approximately 58 miles to the beginning.

Signed: August 29, 1995.

Daniel R. Black,
Acting Director.

Approved: September 14, 1995.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95-24660 Filed 10-3-95; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with exceptions, an amendment to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program). The amendment revises the State's bonding requirements and the acid mine drainage treatment provisions of the Special Reclamation Fund. The amendment will improve operational efficiency, clarify ambiguities, and revise the West Virginia program to be consistent with the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the corresponding Federal regulations. Further amendments will be required to bring the West Virginia Program into full compliance with SMCRA.

EFFECTIVE DATE: October 4, 1995.

Approval dates of regulatory program amendments are listed in § 948.15(o).

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and

Enforcement, 1027 Virginia Street East, Charleston, West Virginia 25301, Telephone (304) 347-7158.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background

SMCRA was passed in 1977 to address environmental and safety problems associated with coal mining. Under SMCRA, OSM works with States to ensure that coal mines are operated in a manner that protects citizens and the environment during mining, that the land is restored to beneficial use following mining, and that the effects of past mining at abandoned coal mines are mitigated.

Many coal-producing States, including West Virginia, have sought and obtained approval from the Secretary of the Interior to carry out SMCRA's requirements within their borders. In becoming the primary enforcers of SMCRA, these "primacy" States accept a shared responsibility with OSM to achieve the goals of SMCRA. Such States join with OSM in a shared commitment to the protection of citizens—our primary customers—from abusive mining practices, to be responsive to their concerns, and to allow them full access to information needed to evaluate the effects of mining on their health, safety, general welfare, and property. This commitment also recognizes the need for clear, fair, and consistently applied policies that are not unnecessarily burdensome to the coal industry—producers of an important source of our Nation's energy.

Under SMCRA, OSM sets minimum regulatory and reclamation standards. Each primacy State ensures that coal mines are operated and reclaimed in accordance with the standards in its approved State program. The States serve as the front-line authorities for implementation and enforcement of SMCRA, while OSM maintains a State performance evaluation role and provides funding and technical assistance to States to carry out their approved programs. OSM also is responsible for taking direct enforcement action in a primacy State, if needed, to protect the public in cases of imminent harm or, following appropriate notice to the State, when a State acts in an arbitrary and capricious manner in not taking needed enforcement actions required under its approved regulatory program.

Currently there are 24 primacy States that administer and enforce regulatory programs under SMCRA. These States may amend their programs, with OSM approval, at any time so long as they remain no less effective than Federal regulatory requirements. In addition, whenever SMCRA or implementing Federal regulations are revised, OSM is required to notify the States of the changes so that they can revise their programs accordingly to remain no less effective than the Federal requirements.

A major goal of SMCRA is to ensure adequate reclamation of all areas disturbed by coal mining. To accomplish this, mining is allowed to proceed only after an operator has filed a performance bond of sufficient amount to ensure completion of reclamation. In the event of bond forfeiture, the regulatory authority uses the performance bond money to contract for the necessary reclamation work. SMCRA also allows for the adoption of an alternative bonding system so long as it achieves the purposes and objectives of the conventional bonding system described above. Under an alternative bonding system, rather than posting full-cost reclamation bonds, an operator is allowed to participate in a bond pool or other financial mechanism that is to provide sufficient revenue at any time to complete reclamation in the event of bond forfeiture.

As part of their approved programs, primacy States have adopted procedures consistent with Federal bonding requirements. The Secretary conditionally approved West Virginia's alternative bonding system on January 21, 1981 (46 FR 5326). After receipt of a required actuarial study, the Secretary fully approved the State's alternative bonding system on March 1, 1983 (48 FR 8448).

Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 21, 1981, Federal Register (46 FR 5915). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Proposed Amendment

On October 1, 1991, OSM notified West Virginia that it needed to amend its alternative bonding system to be in compliance with sections 509(c) and 519(b) and 519(c)(3) of SMCRA (Administrative Record No. WV-878). OSM's annual reviews of the West Virginia program had found that the