

Jr., Office of Endangered Species, 202-343-7814.

REGULATIONS PROMULGATION

Accordingly, it is hereby proposed to amend Part 17, Subchapter B, of

Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. It is proposed to amend § 17.11 by adding, in alphabetical order under REPTILES, the following to the list of animals:

§ 17.11 Endangered and threatened wildlife

Species		Range			Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution	Portion endangered			
Reptiles:							
Tortoise, desert.....	<i>Gopherus agassizii</i>	Beaver Dam Slope	U.S.A. (Utah).....	Entire.....	E		NA

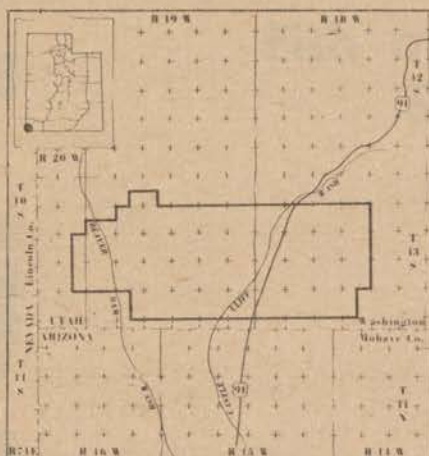
2. Also, The Service proposes to amend § 17.95(c) by adding Critical Habitat of the Beaver Dam Slope population of the desert tortoise after that of the Illinois mud turtle as follows:

(c) Reptiles. * * *

BEAVER DAM SLOPE POPULATION OF THE DESERT TORTOISE

(*Gopherus agassizii*)

Utah, Washington County, E½ secs. 13 and 24, T. 43 S., R. 20 W.; S½ sec. 7, all of secs. 8 through 28, E½ sec. 29, SE¼ sec. 5, SW¼ sec. 4, T. 43 S., R. 19 W.; all of secs. 7 through 10, 15 through 22, 28 through 30, and W½ sec. 27, T. 43 S., R. 18 W.

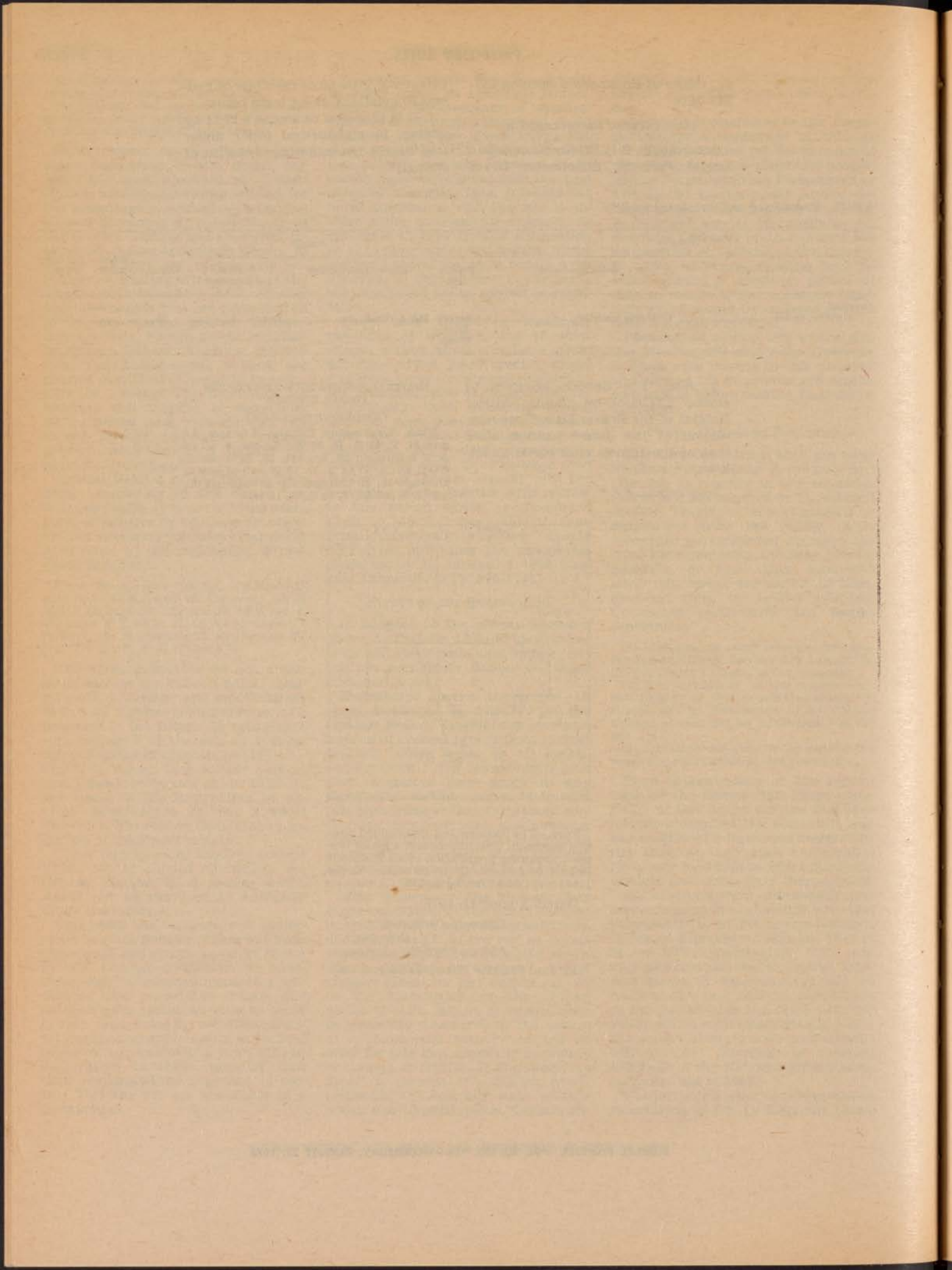


NOTE.—The Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: August 11, 1978.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.

[FR Doc. 78-23567 Filed 8-22-78; 8:45 am]



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WEDNESDAY, AUGUST 23, 1978
PART VII



**DEPARTMENT OF
THE INTERIOR**

**Fish and Wildlife
Service**



VIRGIN RIVER CHUB

**Proposed Endangered Status
and Critical Habitat**

[4310-55]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE
AND PLANTSProposed Endangered Status and Critical
Habitat for the Virgin River ChubAGENCY: Fish and Wildlife Service,
Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Service proposes to determine the Virgin River chub (*Gila robusta seminuda*) to be an Endangered species and identify Critical habitat for this species. This action is being taken because of the decreased population levels and threatened modification of its habitat. This proposal would protect the populations of the Virgin River chub and its habitat. This species occurs in the Virgin River in Nevada, Arizona, and Utah.

DATES: All relevant comments and materials with regard to this proposed rulemaking received no later than November 22, 1978, will be considered.

ADDRESSES: Comments and materials concerning this proposed rulemaking, preferably in triplicate, should be sent to the Director (FWS/OES), U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240.

Comments and materials received will be available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 1100, 1612 K Street, NW., Washington, D.C.

FOR FURTHER INFORMATION
CONTACT:

Mr. Keith M. Schreiner, Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (202-343-4646).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 4(a) of the Endangered Species Act of 1973 states:

General.—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (1) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) Overutilization for commercial, sporting, scientific, or educational purposes;
- (3) Disease or predation;
- (4) The inadequacy of existing regulatory mechanism; or
- (5) Other natural or manmade factors affecting its continued existence.

This authority has been delegated to the Director.

SUMMARY OF FACTORS AFFECTING THE
SPECIES

These findings are summarized herein under each of the five criteria of section 4(a) of the Act. These factors, and their application to the Virgin River chub, are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Virgin River chub, *Gila robusta seminuda*, is endemic to the Virgin River below La Verkin Springs downstream to the backwaters of Lake Mead, approximately 125 miles of river. The river in this section is usually very turbid, warm, highly salty, has a sand bottom, and is erratic in flow. These qualities are characteristics of desert streams, except for the high salinity caused by La Verkin Springs, which apparently forms a barrier to upstream movements by the Virgin River chub. This environment is extremely harsh and inhabited by a few, well adapted aquatic organisms. The Virgin River chub inhabits deeper runs and pools rather than shallower water and seldom ventures into tributaries. Morphologically, the chub is streamlined, but shows no other obvious phenotypic adaptations to its unique environment.

The filling of Lake Mead in the 1930's inundated the lower Virgin River, thus reducing the range of the chub. Other areas of the Virgin River have been dewatered by agricultural withdrawals. Presently, the Virgin River is intermittent over 50 percent of the native range of the chub, and in these areas, chub populations are either absent or reduced in numbers. Little quantitative data is available on population status in the early 1900's, but numbers were probably reduced as more and more water was diverted from the river. Populations in the 1960's appeared low and recent studies have confirmed this.

Habitat destruction caused by flooding (Lake Mead) and alteration by reduced flows appears to be the major factor shrinking the range and reducing population levels of Virgin River chubs. Present water quality conditions in several sections of the river may not be suitable for self-sustaining Virgin River chub populations. The Bureau of Reclamation's proposed desalinization of La Verkin Springs may adversely affect habitat essential to the chub. Also, the proposed Warner Valley project will reduce typical winter flows from 150-200 cfs to 70-80 cfs in most of the remaining areas of chub habitat. Winter flows in other areas will be reduced from the present 60-90 cfs to intermittent flows. Any additional loss of flow or alteration of

habitat in the Virgin River may result in the extinction of this species.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable.

3. *Disease or predation.* Historically, the Virgin River chub was the top carnivore of the Virgin River ecosystem and faced little predation. The introduction of exotic species such as green sunfish, largemouth bass, and red shiner into portions of the Virgin River may have increased predation and may partially account for the loss of chubs from those reaches.

4. *The inadequacy of existing regulatory mechanisms.* Not applicable.

5. *Other natural or manmade factors affecting its continued existence.* Competition with introduced fishes may have been an important factor in the Virgin River chub decline in the lower Virgin River of Nevada. The introduction of several exotic species simultaneously with the disappearance of chub populations suggests cause and effect. Presently, red shiners have replaced the native fishes in the Virgin River below Mesquite, Nevada. This reach of river is severely disturbed by year-round flow depletions and is readily accessible to exotic fishes in Lake Mead. It appears that the combination habitat destruction and competition-predation with introduced fishes is the cause of the decline of Virgin River chubs in this area.

CRITICAL HABITAT

Section 7 of the Act, entitled "Inter-agency Cooperation," states:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

A definition of the term "Critical Habitat" was published jointly by the Fish and Wildlife Service and the National Marine Fisheries Service in the FEDERAL REGISTER of January 4, 1978 (43 FR 870-876) (to be codified as 50 CFR Part 402) and is reprinted below:

"Critical Habitat" means any air, land, or water area (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of a listed species) and constituents element thereof, the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a

distinct segment of its population. The constituent elements of Critical Habitat include, but are not limited to: Physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air. Critical Habitat may represent any portion of the present habitat of a listed species and may include additional areas for reasonable population expansion.

As specified in the regulations for Interagency Cooperation as published in the January 4, 1978, *FEDERAL REGISTER* (43 FR 870), the Director will consider the physiological, behavioral, ecological, and evolutionary requirements for survival and recovery of listed species in determining what areas or parts of habitat are critical. These requirements include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, or rearing of offspring; and generally,
- (5) Habitats that are protected from disturbances or are representative of the geographical distribution of listed species.

The application of these factors, based on data presently available, to the proposed critical habitat of the Virgin River chub, are discussed in the following paragraph.

The portion of the Virgin River proposed as critical habitat includes sufficient area for normal population growth and individual movements. The deeper runs and pools of the Virgin River provide habitat for the chub and its food organisms, aquatic insects and probably small fishes. Reproduction has not been observed but is presumed to occur in the proposed area since the fish is not known to occur outside the main channel of the river. The Virgin River is the only known habitat of the Virgin River chub.

The areas included in this proposal do not necessarily include the entire critical habitat of the Virgin River chub, and modifications of its critical habitat designations may be proposed in the future. In accordance with section 7 of the act, all Federal departments and agencies are required to insure that actions authorized, funded, or carried out by them would not result in the destruction or adverse modification of the critical habitat of the Virgin River chub.

There may be many kinds of actions which can be carried out within the critical habitat of a species which would not be expected to adversely affect that species. This point has not been well understood by some persons. There has been widespread and erroneous belief that a critical habitat designation is something akin to establishment of a wilderness area of wildlife refuge, and automatically closes an area to most human uses. Actually, a critical habitat designation applies only to Federal agencies, and essentially is an official notification to these agencies that their responsibilities pursuant to section 7 to the act are applicable in a certain area.

A critical habitat designation must be based solely on biological factors. There may be questions of whether and how much habitat is critical, in ac-

cordance with the above interpretation, or how to best legally delineate this habitat, but any resultant designation must correspond with the best available biological data. It would not be in accordance with the law to involve other motives, for example, to enlarge a critical habitat delineation so as to cover additional habitat under section 7 provisions, or to reduce a delineation so that actions in the omitted area would not be subject to evaluation.

There may indeed be legitimate questions of whether, and to what extent, certain kinds of actions would adversely affect listed species. These questions, however, are not relevant to the biological basis of critical habitat delineations. Such questions should, and can more conveniently, be dealt with after critical habitat has been designated. In this respect, the Service and the National Marine Fisheries Service, in cooperation with other Federal agencies, have drawn up regulations which, in part, establish a consultation and assistance process for helping to evaluate the possible effects of actions on critical habitat. Provisions for interagency cooperation were published on January 4, 1978, in the *FEDERAL REGISTER* (43 FR 870-876) (to be codified as 50 CFR Part 402) to assist Federal agencies in complying with section 7 of the Endangered Species Act of 1973.

EFFECT OF THE RULEMAKING

The effects of these determinations and this rulemaking include, but are not necessarily limited to, those discussed below.

Endangered species regulations already published in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all endangered species. All of those prohibitions and exceptions also apply to any threatened species unless a special rule pertaining to that threatened species has been published and indicated otherwise. The regulations referred to above, which pertain to endangered species, are found at § 17.21 of title 50 and are summarized below.

With respect to the Virgin River chub in the United States, all prohibitions of section 9(a)(1) of the act, as implemented by 50 CFR 17.21 would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce this species. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents

of the Service and State conservation agencies.

Regulations published in the *FEDERAL REGISTER* of September 26, 1975 (40 FR 44412) codified in 50 CFR Part 17, provided for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened species under certain circumstances. Such permits involving endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Pursuant to section 4(b) of the act, the Director will notify the Governors of Arizona, Nevada, and Utah, with respect to this proposal and request their comments and recommendations before making final determinations.

PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of any Endangered or Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

- (1) Biological or other relevant data concerning any threat (or the lack thereof) to the Virgin River chub;
- (2) The location of and reasons why any habitat of the Virgin River chub should or should not be determined to be critical habitat as provided for by section 7 of the Act;
- (3) Additional information concerning the range and distribution of the Virgin River chub.

Final promulgation of the regulations on the Virgin River chub will take into consideration the comments and any additional information received by the Director and such communications may lead him to adopt final regulations that differ from this proposal.

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1612 K Street NW., Washington, D.C. 20240, and may be examined during regular business hours or can be obtained by mail. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

PROPOSED RULES

The primary author of this proposed rulemaking is Dr. James D. Williams, Office of Endangered Species, 202-343-7814.

REGULATIONS PROMULGATION

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chap-

ter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. It is proposed to amend § 17.11 by adding, in alphabetical order, under "Fishes", the following to the list of animals:

§ 17.11 Endangered and threatened wildlife

Species		Range		Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution			
Fishes:						
Chub, Virgin River	<i>Gila robusta seminuda</i>	NA	U.S.A. (Utah, Arizona, and Entire Nevada).	E		NA

2. Also, the Service proposes to amend § 17.95(e) by adding critical habitat of the Virgin River chub after that of the slender chub as follows:

(e) *Fishes*.

• • • • •

VIRGIN RIVER CHUB

(*Gila robusta seminuda*)

Nevada, Clark County. Main channel of

Virgin River from the backwaters of Lake Mead upstream to the Nevada-Arizona State line.

Arizona, Mohave County. Main channel of Virgin River from the Nevada-Arizona State line upstream to the Arizona-Utah State line.

Utah, Washington County. Main channel of Virgin River from the Arizona-Utah State line upstream to Utah Highway 15 crossing north of Hurricane, Utah.

VIRGIN RIVER CHUB
ARIZONA, NEVADA and UTAH



NOTE: The Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Dated: August 18, 1978.

HARVEY K. NELSON,
Acting Director,
Fish and Wildlife Service.

[FR Doc. 78-23575 Filed 8-22-78; 8:45 am]

WEDNESDAY, AUGUST 23, 1978
PART VIII



**DEPARTMENT OF
THE TREASURY**

**Bureau of Alcohol,
Tobacco and Firearms**

**LABELING AND
ADVERTISING OF WINE**

**Appellation of Origin, Grape
Type Designations, etc.**

for
signature
and
approval

[4810-31]

Title 27—Alcohol, Tobacco Products and Firearms

CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

(T.D. ATF-53)

PART 4—LABELING AND ADVERTISING OF WINE

Appellation of Origin, Grape-Type Designations, Etc.

AGENCY: Bureau of Alcohol, Tobacco and Firearms.

ACTION: Final rule.

SUMMARY: This rule amends certain regulations relating to the labeling and advertising of wine. These new regulations provide a comprehensive scheme for appellation of origin labeling; make more stringent varietal labeling requirements; and update certain regulations to meet current needs. This rule will result in more accurate information being provided to consumers about wine origin and variety. Although the new rules impose stricter standards on the wine industry regarding the use of descriptive terms, they should have minimal effect on industry costs and promote new markets for American wine.

DATE: These regulations are effective September 22, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas B. Busey, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, D.C. 20226, 202-566-7626.

SUPPLEMENTARY INFORMATION: This Treasury decision is the result of four notices of proposed rulemaking, published on July 17, 1975 (Notice No. 280, 40 FR 30117), February 25, 1976 (Notice No. 290, 41 FR 8188), November 12, 1976 (Notice No. 304, 41 FR 50004), and June 15, 1977 (Notice No. 304 Amended, 42 FR 30517). Public hearings were held on these notices in Washington, D.C., and San Francisco, Calif., in April 1976, February 1977, and September (Washington) and November (San Francisco) 1977. The record on which this Treasury decision is based includes all written comments and testimony presented from July 17, 1975 to December 3, 1977.

Treasury's new regulations governing the labeling of wine are based on the consumer protection and information requirements set forth in section 5(e) of the Federal Alcohol Administration Act, as amended, 27 U.S.C.

205(e) and the Treasury's experience in administering labeling requirements over the past four decades. The adequacy of labeling information must be constantly reexamined as the result of changes in the wine industry and the nature of products produced and consumed.

For the past 2 years we have spent considerable time attempting to define terms which have been used with little or no definition for decades. We have listened to over 100 witnesses, and read hundreds of written comments. We have twice made significant changes to our proposals in response to comments from the public and industry, and further changes are made in this Treasury decision. We believe these regulations will inform wine consumers of those things which are useful to them, without burdening the wine industry with unnecessary paper work or significant added expense.

Because it is important that wine consumers are made fully aware of the new labeling requirements, we intend to publish and distribute a handbook of labeling terminology and otherwise publicize the new regulations.

CHANGES MADE AS A RESULT OF COMMENTS AND TESTIMONY

1. *Varietal wine.* In the most recent notice (No. 304 amended), it was proposed that wine labeled with a varietal designation be derived from not less than 75 percent of grapes of that variety (except in the case of *Vitis labrusca* varieties such as Concord, which would require only 51 percent). In addition, the proposal would have required that the minimum percentage of the named varietal be stated on the label in direct conjunction with the varietal designation.

Numerous comments from the wine industry, wine writers, and consumers suggested that the proposed requirement that the minimum percentage of the labeled variety be shown in direct conjunction with, and in the same size and style of type as the varietal name, is unnecessary. A number of other comments suggested that the percentage be retained, but that it be allowed to appear on any label in small type. There were also a few comments from consumers that the percentage of each variety used be shown on the label, and that the use of the varietal name alone should be allowed only if all the grapes used to make the wine are of the named variety. A few industry comments objected to the 75-percent minimum varietal content, advocating that the present 51 percent be retained, or increased to no more than 67 percent.

The 75-percent minimum varietal content has been retained in the final decision. The proposed requirement that the minimum qualifying percent-

age of the named varietal grape be shown on the label has been dropped for those varieties with a 75-percent minimum, but retained, in modified form, for varieties (presently *Vitis labrusca* varieties only) which are excepted from the 75-percent minimum because of the nature of the grapes involved. In addition, the Director has been given authority to except other varieties upon a showing that the wine is too strongly flavored at 75 percent.

Varietal labeling provides a more informative labeling designation than designations such as Chablis, Burgundy, or simply red table wine. Requiring 100 percent varietal content for these wines would discourage the use of these designations and not necessarily improve the product. Some varieties grown under certain soil and climatic conditions and with certain viticultural practices may make excellent wines at the 100-percent varietal requirement. However, more often some blending with other varieties is necessary to arrive at the best product. The amount of blending will vary among different varieties and different harvests. Because of these factors we believe a certain amount of flexibility is necessary.

We have determined, however, that the 51-percent requirement is too low for most varieties, and permits so much blending that the finished product may bear little or no resemblance to the grape variety used to designate the wine. Based upon all available evidence we have concluded that the 75-percent requirement allows sufficient opportunity for blending while maintaining the identity of the grape.

While we considered requiring a minimum percentage statement, we ultimately decided that such percentage figures would add little by way of useful information to the consumer. Comments and testimony indicated that percentage requirements might mislead the consumer to believe that the higher the varietal percentage, the better the wine. Additionally requiring a percentage statement for this item would logically result in percentage and definitional statements being required for all other labeling designations. This would produce an extremely cluttered label, cause cost problems, and be of uncertain assistance to consumers. The Bureau believes that there has been an insufficient showing of a misleading effect on the public to justify requiring all these percentages and definitions to appear on the label. Rather, the planned public information program discussed above seems sufficient at this time.

2. *Controlled appellations.* Numerous comments from the industry suggested that the term "controlled appellations," used in the proposal to cover viticultural areas and vineyards,

would be taken by consumers as a Government endorsement of quality. They suggested that viticultural areas and vineyards should be treated as any other appellations of origin. Because the Bureau did not intend to imply an indorsement of any type, the proposed term "controlled appellations" which covered viticultural areas and vineyards has been dropped from the regulations. Viticultural areas, defined generally as areas with distinguishable geographic characteristics, have been included in §4.25a, Appellations of Origin.

This Treasury decision does not incorporate vineyard appellations, as originally proposed, into the overall "Appellation of origin" system. We concluded that we had an insufficient record to determine the impact of, and the need for, creating the vineyard appellation with the proposed 95-percent requirement, especially since this might require noncomplying brand names to use the word brand on their labels as described in paragraph 17 of this notice. Consequently, all references to vineyard appellations throughout the regulations have been deleted, and the Bureau plans no new notices on this point. If, however, industry or consumers believe further definition of the term vineyard is necessary, the Bureau will consider any petitions to do so.

3. *Multicounty and multistate appellations.* Comments from the wine industry suggested that two or three county/State appellations be allowed, on the basis that 95 percent or more of the product be derived from grapes grown in the named counties/States, with a formula for the minimum percentage to be required from each county/State.

The Bureau has decided to allow the use of two or three county or two or three State appellations in order to permit greater flexibility in appellation of origin labeling. However, all of the grapes must come from the named counties or from the named States, the percentage of grapes from each county or State must be shown, and the wine must conform to the laws and regulations governing the composition, method of manufacture, and designation of wines in all the States listed in the appellation.

4. *County appellations.* Although wine industry comments recommended that the word "county" be required only in those cases where the name of the county is also part of an approved viticultural area name, and that it then only be required to be half as large as the name of the county, the Bureau has decided to make no change in the proposed requirement that the word "county" be shown in the same size of type and in letters as conspicuous as the name of the

county. This requirement is being imposed in order to avoid the possibility of consumers confusing a "political boundary" appellation of origin with an appellation of viticultural significance. Because all references to style of type have been eliminated, the provision that the type style for the word "County" be the same has been dropped.

5. *Viticultural area boundaries.* The industry suggested that all vineyards which presently supply grapes legally using a particular viticultural area description, or which were planted for that purpose, be "grandfathered" into the appropriate viticultural areas, whether or not they fit within the boundaries defined in future proceedings pursuant to these regulations. In order to establish rational and uniform viticultural area boundaries it was determined that no vineyards will be "grandfathered" into an area merely because they presently supply, or were planted to supply, grapes currently using a particular viticultural area description.

Shortly after the effective date of this Treasury decision, the Bureau intends, as soon as our budget permits, to begin holding hearings to determine the precise boundaries of viticultural areas.

6. *Applications for establishment of viticultural areas.* The industry suggested that only a bonded winery with landholdings within a proposed viticultural area, or a bonded winery in conjunction with a vineyard owner, should be permitted to apply for establishment of a viticultural area.

Viticultural areas will be established by regulations, and pursuant to the Administrative Procedure Act (5 U.S.C. 553(e)) any interested party can petition for the issuance, amendment or repeal of a regulation. Therefore, the new rules will permit any interested party to apply for the establishment of a viticultural area.

7. *Required percentage of grapes from viticultural area.* Wine industry comments suggested that the proposed requirement that 85 percent of the wine be derived from grapes grown in the labeled viticultural area is too restrictive, and that this percentage should be reduced to 75 percent. On the other hand, some consumers and grape growers suggested that the requirement should be 95 or 100 percent for any appellation.

Because the Bureau believes it is important that viticultural area appellations be held to a higher standard than the standard that exists for political subdivisions, and because the integrity of the smaller viticultural areas must be protected, no change has been made in the proposal that 85 percent of the wine be derived from grapes from a viticultural area when

the wine is labeled with a viticultural area appellation.

8. *Estate bottled.* Industry and consumer comments strongly favored continued use of the labeling term "estate bottled" or some similar term, based on various definitions. There was very little support for our proposed ban on the use of the term after December 31, 1982. In view of a strong demand by industry and consumers for the continued use of the term "estate bottled," with a stricter definition, the Bureau has decided to permit the use of this term.

In general terms, "estate bottled" is defined to mean that the bottling winery grew all of the grapes used to make the wine on land which it owned or controlled within a viticultural area. In addition, the winery itself must be located within the labeled viticultural area. The requirement that the bottling winery be located in the same locale as the vineyards is based on the implication of the term "estate bottled"; that the wine is bottled on the estate. The requirement does not imply any loss of growing area character of the grapes if shipped for a limited distance.

9. *Vineyard descriptions.* The proposed requirement that a graphic or narrative description of the location of the vineyard be shown on the label of vineyard labeled wine was dropped since the vineyard appellation proposal, as discussed above, is not being implemented.

10. *Vintage requirements.* The current requirement for vintage wine is that 95 percent be harvested in the labeled year and in the labeled appellation area. The wine industry strongly recommended the present requirement that 95 percent of the grapes used to make a vintage wine must be grown in the labeled appellation area, be changed to 75 percent, as is the case for nonvintage wine. We concur that the two provisions should be divorced, and that vintage should refer only to the year of harvest. Accordingly, this Treasury decision requires that vintage wine be made from grapes no less than 95 percent of which were harvested in the labeled year. The percentage required to come from the labeled area of origin will vary with the type of appellation (85 percent for a viticultural area, 75 percent for a county or state or foreign equivalent, and 100 percent for a multicounty or multistate appellation).

11. *Origin statements on wine finished in a State other than the State of origin.* Grapes grown in one State and finished in another are presently not entitled to the appellation of the State in which grown. The only appellation to which such wine is entitled is "American." Comments received suggested that wine finished in a differ-

ent State than that in which the grapes are grown should be entitled to the appellation of the State of origin. Because of modern transportation, and particularly with the advent of field crushing, grapes grown in one place do not change character by being bottled in another location reasonably close by. We have therefore decided that wine finished in a State adjacent to the State of origin may be labeled with an appellation appropriate to the State in which the grapes were grown.

12. *Minimum varietal requirement of 51 percent for Vitis Rotundifolia varieties and other varieties considered by the Director to be unpalatable at 75 percent.* Wine industry comments recommended that the proposed exception to the 75 percent varietal requirement for Vitis Labrusca varieties should be expanded to cover Vitis Rotundifolia (Muscadine) varieties, and other varieties deemed by the Director to be unpalatable at 75 percent. The Bureau considers it probable that Vitis Rotundifolia varieties and some others may well have too strong a flavor to be marketable at a 75 percent varietal content. We will not make exceptions for these varieties, however, until convincing evidence is presented establishing the need for an exception. The regulations contain a provision allowing the Director to make exceptions to the 75 percent varietal requirement when he finds such exceptions are warranted.

13. *Two or three varieties.* The proposal that two or three varieties, when used as a type designation, must be labeled with a controlled appellation has been modified to allow the use of any appellation of origin in order to conform with our decision to drop the concept of controlled appellations. This was primarily done because the comments received indicated that this labeling requirement should not be limited to viticultural area designations but should be expanded to include and allow all appellations of origin. However, the percentage of each variety will have to be shown, and the total will have to be 100 percent. In the case of multicounty or multistate appellations, the percentage of each variety from each county or state will have to be shown.

14. *Winemaking terms.* The Bureau proposed to define the terms which may be used on a label to indicate the various winemaking functions performed in connection with the wine. The only terms which would have been allowed are: produced, prepared, blended, and manufactured. Under the proposal, the term "produced" was defined to mean 95 percent of the wine was fermented by the named person, as compared to 75 percent under existing regulations. The other terms would

have covered the various wine making functions where the person did not qualify for "produced by". The industry comments suggested changes in the proposal. They suggested that the proposal to change the definition of "produced" from 75 percent to 95 percent fermented by the named person was unwarranted in light of current winemaking practices. They also proposed that the term "vinted" be substituted for the terms "prepared," "blended," and "manufactured."

After considering the comments and testimony, the Bureau has decided not to issue new regulations on the subject of winemaking terms at this time.

Since this Treasury decision does not incorporate new regulations on winemaking terms, it will not affect terms, such as vinted, currently being used on label approvals. The Bureau plans no new notice of proposed rulemaking on this point. If, however, industry or consumers believe further definition of this or other terms is necessary, the Bureau will consider any petitions to do so.

15. *Elimination of the term "domestic".* The industry suggested that the term "domestic" should be replaced by the term "American". The Bureau concurs with the industry recommendation that the term "American" has a more precise meaning. The change has been made in the sections affected by this Treasury decision, and will be made in other sections when the opportunity arises.

16. *Form of address.* Industry comments suggested that the proposed requirement that the actual address of the bottling premises be shown for all wine except that wine imported in bottles should be changed to allow the bottler's principal place of business to be shown. In addition, it was suggested the proposed requirement that the bottler's registry number be shown should be amended to require the number only when the operating name of the winery is not used. The Bureau is convinced that it is important that more precise information concerning who is responsible for bottling and where the bottling took place be used on wine labels. Therefore, this document adopts the form of address requirements as proposed.

17. *Names of geographical significance.* This Treasury decision prohibits the unrestricted use of specific geographical product names on products which cannot qualify for that specific geographical appellation of origin under § 4.25a. However, if the Director finds that because of long usage such names are recognized by consumers as fanciful product names and not representations of origin, he may permit continued use of the name, even though the product does not originate in the named geographical area, if the

word "brand" is prominently displayed immediately following the product name. In addition, the Director may require that the label of such a product bear a statement disclaiming the geographical reference as a representation of the origin of the wine.

The new regulations will not affect the use of corporate or trade names and will affect brand names only to the extent that the brand name is misleading as to origin. As explained earlier, this Treasury decision also does not incorporate vineyard appellations, as previously proposed, into the overall "appellation of origin" system. Therefore, no regulations are being issued concerning the use of brand names containing the word vineyard.

Brand names that are misleading as to origin, however, will have to be qualified by the word "brand." Our most recent notice of proposed rulemaking on this subject, published on June 15, 1977, would have permitted such brand names to be qualified by the symbols (R) and (TM) as alternatives to "brand." After reviewing the record, we find that the symbols (R) and (TM) are not adequate alternatives to the word "brand" because (1) the symbol (R) is also used under the Lanham Act to designate certification marks which certify geographical origin, and (2) where the brand name has geographical significance, the use of (R) or (TM) is not adequate warning to the consumer that the wine did not come from the geographical area described.

18. *Percentage statements.* The regulations initially proposed referred to percentage by weight instead of by volume (as required by current regulations). This change was unintentional, as was explained by the Director at the beginning of each public hearing. Percent or percentage has been defined in this Treasury Decision to refer to volume throughout.

19. *Compliance dates.* Industry comments suggested that all amended regulations be phased in over a period of 5 production years and 8 bottling years. Comments from consumers and grape growers favored a phase in period of no more than 3 years. To allow for an orderly transition, the Bureau has decided that a period of approximately 5 years is warranted before full compliance with some of the new rules becomes mandatory. Those provisions not requiring mandatory compliance until January 1, 1983 are highlighted in the individual headings by the phrase "not mandatory before January 1, 1983". Mandatory compliance with all provisions is therefore scheduled for January 1, 1983. However, use of these provisions may be made before January 1, 1983. For example, an application (petition) for a viticultural area designation may be

made 30 days from date of publication of these regulations.

20. *Type size.* Industry comments suggested that minimum type sizes be specified in millimeters, that type styles be deregulated, and that statements required by new regulations be specified as "readily legible" with no minimum size.

The Bureau concurs with industry comments that minimum type sizes should be specified in millimeters, and that we should deregulate type styles. We do not, however, agree with the concept of "readily legible" minimum sizes because no standard is set for what "readily legible" means. We have set a minimum type size of 1 millimeter for wine bottles of 187 milliliters or less. The minimum type size for larger bottles has been set at 2 millimeters. The effective date for compliance with type size requirements is January 1, 1980.

21. *Additional information on labels.* The wine industry and some consumers suggested that any truthful, accurate, and specific information be allowed on labels. Because of these comments, the Bureau has decided to relax the present prohibitions against certain age statements, provided that such statements are truthful, accurate, and specific, and are neither disparaging nor misleading. Relaxation of other prohibitions is under consideration, and may become the subject of a future rulemaking proceeding.

DRAFTING INFORMATION

The principal authors of this regulation were D. R. Royce, Thomas B. Busey, and Raymond F. Conrad, of the Regulations and Procedures Division of the Office of Regulatory Enforcement, Bureau of Alcohol, Tobacco and Firearms. However, personnel from other offices of the Bureau of Alcohol, Tobacco and Firearms and the Treasury Department participated in developing the regulations, both on matters of substance and style.

AUTHORITY CITATION

These regulations are issued under the provisions of Section 5 of the Federal Alcohol Administration Act (49 Stat. 981 as amended; 27 U.S.C. 205).

In view of the foregoing, the regulations in 27 CFR part 4 are amended as follows:

PARAGRAPH 1. Section 4.10 is amended by adding the new definitions "American" and "percent of percent" and by deleting the term vintage wine. The definitions to be added to § 4.10 are as follows:

§ 4.10 Meaning of terms.

American. As used in this part, means the several States and Territor-

ies and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means the Commonwealth of Puerto Rico.

Percent or percentage. As used in this part, means percent by volume.

PARAGRAPH 2. A new § 4.23a is added immediately following § 4.23 to read as follows:

§ 4.23a Varietal (grape type) labeling. (Not Mandatory before January 1, 1983)

(a) *General.* The names of one or more grape varieties may be used as the type designation of a grape wine only if the wine is also labeled with an appellation of origin, as defined in § 4.25a.

(b) *One variety.* The name of a single grape variety may be used as the type designation if not less than 75 percent of the wine is derived from grapes of that variety, the entire 75 percent of which was grown in the labeled appellation of origin area.

(c) *Exceptions.* (1) Wine made from any Vitis Labrusca variety (exclusive of hybrids with Labrusca parentage) may be labeled with the varietal name if: (i) Not less than 51 percent of the wine is derived from grapes of that variety; (ii) the statement "contains not less than 51 percent (name of variety)" is shown on the brand label, back label or a separate strip label (except that this statement need not appear if 75 percent or more of the wine is derived from grapes of the named variety); and (iii) the entire qualifying percentage of the named variety was grown in the labeled appellation of origin area. (2) Wine made from any variety of any species found by the Director upon appropriate application to be too strongly flavored at 75 percent minimum varietal content may be labeled with the varietal name if: (i) Not less than 51 percent of the wine is derived from grapes of that variety; (ii) the statement "contains not less than 51 percent (name of variety)" is shown on the brand label, back label or a separate strip label (except that this statement need not appear if 75 percent or more of the wine is derived from grapes of the named variety); and (iii) the entire qualifying percentage of the named variety was grown in the labeled appellation of origin area.

(d) *Two or three varieties.* The names of two or three grape varieties may be used as the type designation if: (1) All of the grapes used to make the wine are of the labeled varieties; (2) the percentage of the wine derived from each variety is shown on the

label (with a tolerance of plus or minus 2 percent); (3) if labeled with a multicounty appellation, the percentage of the wine derived from each variety from each county is shown on the label; and (4) if labeled with a multistate appellation, the percentage of the wine derived from each variety from each state is shown on the label.

PARAGRAPH 3. A new § 4.25a is added immediately following § 4.25 to read as follows:

§ 4.25a Appellations of origin (Not Mandatory before January 1, 1983).

(a) *Definition.*—(1) *American wine.* An American appellation of origin is: (i) The United States; (ii) a State; (iii) two or no more than three States which are all contiguous; (iv) a county (which must be identified with the word "county", in the same size of type, and in letters as conspicuous as the name of the county); (v) two or no more than three counties in the same States; or (vi) a viticultural area (as defined in paragraph (c) of this section).

(2) *Imported wine.* An appellation of origin for imported wine is: (i) A county, (ii) a state, province, territory, or similar political subdivision of a country equivalent to a state or county; or (iii) a viticultural area.

(b) *Qualification.*—(1) *American wine.* An American wine is entitled to an appellation of origin other than a multicounty or multistate appellation, or a viticultural area, if: (i) At least 75 percent of the wine is derived from fruit or agricultural products grown in the appellation area indicated; (ii) it has been fully finished (except for cellar treatment pursuant to § 4.22(c), and blending which does not result in an alteration of class or type under § 4.22(b)) in the United States, if labeled "American"; or, if labeled with a State appellation, within the labeled State or an adjacent State; or if labeled with a county appellation, within the State in which the labeled county is located; and (iii) it conforms to the laws and regulations of the named appellation area governing the composition, method of manufacture, and designation of wines made in such place.

(2) *Imported wine.* An imported wine is entitled to an appellation of origin other than a viticultural area if: (i) At least 75 percent of the wine is derived from fruit or agricultural products grown in the area indicated by the appellation of origin; and (ii) the wine conforms to the requirements of the foreign laws and regulations governing the composition, method of production, and designation of wines made in such country, province, etc. as appropriate.

(c) *Multicounty appellations.* An appellation of origin comprising two or

no more than three counties in the same State may be used if all of the grapes were grown in the counties indicated, and the percentage of the wine derived from grapes grown in each county is shown on the label, with a tolerance of plus or minus 2 percent.

(d) *Multistate appellation.* An appellation of origin comprising two or no more than three States which are all contiguous may be used, if: (1) all of the grapes were grown in the States indicated, and the percentage of the wine derived from grapes grown in each State is shown on the label, with a tolerance of plus or minus 2 percent; (2) it has been fully finished (except for cellar treatment pursuant to § 4.22(c), and blending which does not result in an alteration of class or type under § 4.22(b)) in one of the labeled appellation States; (3) it conforms to the laws and regulations governing the composition, method of manufacture, and designation of wines in all the States listed in the appellation.

(e) *Viticultural area.*—(1) *Definition.*—(i) *American wine.* A delimited grape growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of this chapter.

(ii) *Imported wine.* A delimited place or region (other than an appellation defined in paragraphs (a)(2) (i) or (ii)) the boundaries of which have been recognized and defined by the country of origin for use on labels of wine available for home consumption.

(2) *Establishment of American viticultural areas.* Petitions for establishment of American viticultural areas may be made to the director by any interested party, pursuant to the provisions of § 71.41(c) of this title. The petition may be in the form of a letter, and should contain the following information: (i) Evidence that the name of the viticultural area is locally and/or nationally known as referring to the area specified in the application; (ii) historical or current evidence that the boundaries of the viticultural area are as specified in the application; (iii) evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas; (iv) the specific boundaries of the viticultural area, based on features which can be found on U.S. Geological Survey (U.S.G.S.) maps of the largest applicable scale; and (v) a copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

(3) *Requirements for use.* A wine may be labeled with a viticultural area appellation if: (i) The appellation has been approved under part 9 of this title or by the appropriate foreign government; (ii) not less than 85 percent

of the wine is derived from grapes grown within the boundaries of the viticultural area; (iii) in the case of American wine, it has been fully finished within the State, or one of the States, within which the labeled viticultural area is located (except for cellar treatment pursuant to § 4.22(c), and blending which does not result in an alteration of class or type under § 4.22(b)); and (iv) it conforms to the laws and regulations of all the States contained in the viticultural area.

PARAGRAPH 4. A new section, § 4.26, is added immediately following § 4.25a. Section 4.26 reads as follows:

§ 4.26 Estate bottled (not mandatory before January 1, 1983).

(a) *Conditions for use.* The term "Estate bottled" may be used by a bottling winery on a wine label only if the wine is labeled with a viticultural area appellation of origin and the bottling winery: (1) Is located in the labeled viticultural area; (2) grew all of the grapes used to make the wine on land owned or controlled by the winery within the boundaries of the labeled viticultural area; (3) crushed the grapes, fermented the resulting must, and finished, aged, and bottled the wine in a continuous process (the wine at no time having left the premises of the bottling winery).

(b) *Special rule for cooperatives.* Grapes grown by members of a cooperative bottling winery are considered grown by the bottling winery.

(c) *Definition of "Controlled."* For purposes of this section, "Controlled by" refers to property on which the bottling winery has the legal right to perform, and does perform, all of the acts common to viticulture under the terms of a lease or similar agreement of at least 3 years duration.

(d) *Use of other terms.* No term other than "Estate bottled" may be used on a label to indicate combined growing and bottling conditions.

PARAGRAPH 5. A new § 4.27 is added immediately following § 4.26. Section 4.27 reads as follows:

§ 4.27 Vintage wine.

(a) *General.* Vintage wine is wine labeled with the year of harvest of the grapes and made in accordance with the standards prescribed in classes 1, 2, or 3 of § 4.21. At least 95 percent of the wine must have been derived from grapes harvested in the labeled calendar year, and the wine must be labeled with an appellation of origin other than a country (which does not qualify for vintage labeling). The appellation shall be shown in direct conjunction with the designation required by § 4.32(a)(2), in the same size of type, and in lettering as conspicuous as that designation. In no event may the

quantity of wine removed from the producing winery, under labels bearing a vintage date, exceed the volume of vintage wine produced in that winery during the year indicated by the vintage date.

(b) *American wine.* A permittee who produced and bottled or packed the wine, or a person other than the producer who repackaged the wine in containers of 5 liters (or 1-gallon before January 1, 1979) or less may show the year of vintage upon the label if the person possesses appropriate records from the producer substantiating the year of vintage and the appellation of origin; and if the wine is made in compliance with the provisions of paragraph (a) of this section.

(c) *Imported wine.* Imported wine may bear a vintage date if: (1) It is made in compliance with the provisions of paragraph (a) of this section; (2) it is bottled in containers of 5 liters (or 1-gallon before January 1, 1979) or less prior to importation, or bottled in the United States from the original container of the product (showing a vintage date); (3) if the invoice is accompanied by, or the American bottler possesses, a certificate issued by a duly authorized official of the country of origin (if the country of origin authorizes the issuance of such certificates) certifying that the wine is of the vintage shown, that the laws of the country regulate the appearance of vintage dates upon the labels of wine produced for consumption within the country of origin, that the wine has been produced in conformity with those laws, and that the wine would be entitled to bear the vintage date if it had been sold within the country of origin.

PARAGRAPH 6. Section 4.32 is amended (1) by revising paragraph (c), and (2) by making editorial changes in paragraph (a). As amended, paragraphs (a) and (c) read as follows:

§ 4.32 Mandatory label information.

(a) Except as otherwise provided in paragraph (c) of this section, there shall be stated on the brand label:

(c) In the case of imported wine, the name and address of the importer (when required to be shown) need not be stated upon the brand label if it is stated upon any other label affixed to the container. In the case of American wine bottled or packed for a retailer or other person under a private brand, the name and address of the bottler or packer need not be stated upon the brand label if the name and address of the person for whom bottled or packed appears upon the brand label, and the name and address of the bottler or packer is stated upon any other label affixed to the container.

PARAGRAPH 7. Section 4.34(a) is editorially revised, § 4.34(b) is amended to add new requirements, and a new paragraph (c) is added. As amended, § 4.34 reads as follows:

§ 4.34 Class and type.

(a) The class of the wine shall be stated in conformity with subpart C of this part if the wine is defined therein, except that "table" ("light") and "dessert" wines need not be designated as such. In the case of still grape wine there may appear, in lieu of the class designation, any grape-type designation, semigenic geographic type designation, or geographic distinctive designation, to which the wine may be entitled. In the case of champagne, or crackling wines, the type designation "champagne" or "crackling wine" ("petillant wine", "frizzante wine") may appear in lieu of the class designation "sparkling wine". In the case of wine which has a total solids content of more than 17 grams per 100 cubic centimeters the words "extra sweet", "specially sweetened", "specially sweet" or "sweetened with excess sugar" shall be stated as a part of the class and type designation. The last of these quoted phrases shall appear where required by part 240 of this title, on wines sweetened with sugar in excess of the maximum quantities specified in such regulations. If the class of the wine is not defined in subpart C, a truthful and adequate statement of composition shall appear upon the brand label of the product in lieu of a class designation. In addition to the mandatory designation for the wine, there may be stated a distinctive or fanciful name, or a designation in accordance with trade understanding. All parts of the designation of the wine, whether mandatory or optional, shall be in direct conjunction and in lettering substantially of the same size and kind.

(b) An appellation of origin, such as "American", "California", "Napa Valley", or "Chilean", disclosing the true place of origin of the wine, shall appear in direct conjunction with, in the same size of type, and in lettering as conspicuous as, the class and type designation if (1) a grape type (varietal) with geographical significance is used, or after December 31, 1982, any grape type used, under the provisions of § 4.23a; (2) a semigenic type designation is employed as the type designation of the wine, pursuant to § 4.24(b); or (3) a brand name or product name qualified with the word "Brand" as required by the provisions of § 4.39 (i) or (j).

(c) Compliance with the provisions of paragraph (b)(3) of this section is not mandatory before January 1, 1983.

PARAGRAPH 8. Section 4.35(a) is editorially revised and amended, § 4.35(c) is

amended to add a new requirement, and § 4.35(d) is amended by revising the paragraph and adding a new requirement. As amended, § 4.35 reads as follows:

§ 4.35 Name and address.

(a) *American wine.* On labels of containers of American wine, there shall be stated the name of the bottler or packer and the place where bottled or packed (or until January 1, 1983, in lieu of such place the principal place of business of the bottler or packer if in the same State where the wine was bottled or packed, and, if bottled or packed on bonded premises, the ATF registry number of such premises) immediately preceded by the words "bottled by" or "packed by" except that:

* * *

(c) *Form of address.* The "place" stated shall be the post office address (after December 31, 1982 the post office address shall be the address shown on the basic permit or other qualifying document of the premises at which the operations took place; and there shall be shown the address for each operation which is designated on the label. An example of such use would be "Produced at Gilroy, Calif., and bottled at San Mateo, Calif., by XYZ winery, BW-CA-10001."), except that the street address may be omitted. No additional places or addresses shall be stated for the same person unless (1) such person is actively engaged in the conduct of an additional bona fide and actual alcoholic beverage business at such additional place or address, and (2) the label also contains in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address in connection with the particular product.

(d) *Trade or operating names.* The trade or operating name of any person appearing upon any label shall be identical with a name appearing on his or her basic permit or notice. In addition, after December 31, 1982, the registry number of the American bonded winery, bonded wine cellar, taxpaid wine bottling house, or distilled spirits plant at which the wine was bottled shall be shown on the label in direct conjunction with the name and address of the bottler, in type as conspicuous as the name and address.

PARAGRAPH 9. Section 4.38 is completely amended, to read as follows:

§ 4.38 General requirements.

(a) *Legibility.* All labels shall be so designed that all the statements thereon required by §§ 4.30-4.39 are readily legible under ordinary conditions, and all such statement shall be on a contrasting background.

(b) *Size of type.* Unless otherwise provided in this paragraph, all statements required on labels by this part shall be in script, type, or printing not smaller than 2 millimeters (or 8-point gothic until January 1, 1980); except that if contained among other descriptive or explanatory reading matter, the script, type, or printing of all required material shall be of a size substantially more conspicuous than such other descriptive or explanatory reading matter. In the case of labels of containers having a capacity of 187 milliliters (or one-half pint until January 1, 1979) or less, such script, type, or printing need not be in 2-millimeter (or 8-point gothic until January 1, 1980) type but shall not be smaller than 1 millimeter (or 6-point gothic until January 1, 1980). Alcoholic content statements shall not appear in script, type, or printing larger or more conspicuous than 2 millimeters (or 8-point gothic until January 1, 1980) nor less than 1 millimeter (or 6-point gothic until January 1, 1980) on labels of containers having a capacity of 5 liters or less (or 1 gallon or less until January 1, 1979) and shall not be set off with a border or otherwise accented.

(c) *English language.* All mandatory label information shall be stated on labels in the English language, except that the brand name, the place of production, and the name of the manufacturer, producer, blender, bottler, packer, or shipper appearing on the label need not be in the English language if the words "product of" immediately precede the name of the country of origin stated in accordance with customs requirements. Additional statements in foreign languages may be made on labels, if they do not in any way conflict with, or contradict the requirements of §§ 4.30-4.39.

(d) *Location of label.* Labels shall not obscure Government stamps nor be obscured thereby.

(e) *Labels firmly affixed.* All labels shall be affixed to containers of wine in such manner that they cannot be removed without thorough application of water or other solvents.

(f) *Additional information on labels.* Labels may contain information other than the mandatory label information required by §§ 4.30-4.39, if such information complies with the requirements of such sections and does not conflict with, nor in any manner qualify statements required by this part. In addition, information which is truthful, accurate, and specific, and which is neither disparaging nor misleading may appear on wine labels.

(g) *Representations as to materials.* If any representation (other than representations or information required by §§ 4.30-4.39 or percentage state-

ments required or permitted by this part) is made as to the presence, excellence, or other characteristic of any ingredient in any wine, or used in its production, the label containing such representation shall state, in print, type, or script, substantially as conspicuous as such representation, the name and amount in percent by volume of each such ingredient.

(h) *Statement of contents of containers.* Upon request of the Director, there shall be submitted a full and accurate statement of the contents of the containers to which labels are to be or have been affixed.

[T.D. 6521, 25 FR 13835, December 29, 1960, as amended by T.D. 7185, 37 FR 7976, April 22, 1972.]

PARAGRAPH 10. Section 4.39 is amended to (1) make an editorial change in paragraph (a)(2); (2) delete the footnote and incorporate its contents into paragraph (a)(5); (3) make an editorial change to paragraph (a)(9); (4) completely revise paragraph (b); (5) delete paragraph (d); (6) reletter paragraphs (e) through (i) as (d) through (h); and (7) add new paragraphs (i), (j), (k), and (l). As amended, § 4.39(a)(2), (a)(5), (a)(9), (b), (d), (j), (k), and (l) read as follows:

§ 4.39 Prohibited practices.

(a) *Statements on labels.* * * *
(2) Any statement that is disparaging of a competitor's products.

(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the Director finds to be likely to mislead the consumer. Enforceable money-back guarantees are not prohibited.

(9) Any word in the brand name or class and type designation which is the name of a distilled spirits product or which simulates, imitates, or created the impression that the wine so labeled is, or is similar to, any product customarily made with a distilled spir-

its base. Examples of such words are: "Manhattan," "Martini," and "Daquiri" in a class and type designation or brand name of a wine cocktail; "Cuba Libre," "Zombie," and "Collins" in a class and type designation or brand name of a wine specialty or wine highball; "creme," "cream," "de," or "of" when used in conjunction with "menthe," "mint," or "cacao" in a class and type designation or a brand name of a mint or chocolate flavored wine specialty.

(b) *Statement of age.* No statement of age or representation relative to age (including words or devices in any brand name or mark) shall be made, except (1) for vintage wine, in accordance with the provisions of § 4.27; (2) references relating to methods of wine production involving storage or aging in accordance with § 4.38(f); or (3) use of the word "old" as part of a brand name.

(i) *Geographical brand names (not mandatory before January 1, 1983).* A brand name of viticultural significance may not be used unless the bottling winery is located in the geographical area used in the brand name, and the wine meets the appellation of origin requirements for the geographical area named; or the brand name is qualified by the word "brand" immediately following the brand name in the same size of type and as conspicuous as the brand name itself. A name has viticultural significance when it is the name of a state or county (or the foreign equivalents), when approved as a viticultural area in part 9 of this chapter or by a foreign government, or when found to have viticultural significance by the Director.

(j) *Product names of geographical significance (not mandatory before January 1, 1983).* The use of product names with specific geographical significance is prohibited unless the Director finds that because of their long usage, such names are recognized by consumers as fanciful product names and not representations as to origin. In such cases the product names shall be qualified with the word "brand" im-

mediately following the product name, in the same size of type, and as conspicuous as the product name itself. In addition, the label shall bear an appellation of origin under the provisions of § 4.34(b), and, if required by the Director, a statement disclaiming the geographical reference as a representation as to the origin of the wine.

(k) *Other indications of origin.* Other statements, designs, devices or representations which indicate or infer an origin other than the true place of origin of the wine are prohibited.

(l) *Foreign terms.* Foreign terms which: (1) Describe a particular condition of the grapes at the time of harvest (such as "Auslese," "Eiswein," and "Trockenbeerenauslese"); or (2) denote quality under foreign law (such as "Qualitätswein" and "Kabinett") may not be used on the labels of American wine.

PARAGRAPH 11. Section 4.64(c) is amended to agree with the provisions of § 4.39, and to agree with changed section numbers in other amended sections. Section 4.64(e) is deleted, and subsequent paragraphs are relettered as amended, § 4.64(c) reads as follows:

§ 4.64 Prohibited statements.

(c) *Statement of age.* No statement of age or representation relative to age (including words or devices in any brand name or mark) shall be made, except (1) for vintage wine, in accordance with the provisions of § 4.27; (2) references in accordance with § 4.38(f); or (3) use of the word "old" as part of a brand name.

Signed: August 10, 1978.

JOHN S. KROGMAN,
Acting Director.

Approved: August 16, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the
Treasury.

[FR Doc. 78-23688 Filed 8-22-78; 8:45 am]