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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2013–0008; T.D. TTB–120; Ref: Notice No. 139]

RIN 1513–AC02

Establishment of the Upper Hiwassee Highlands Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 690-square mile “Upper Hiwassee Highlands” viticultural area in Cherokee and Clay Counties, North Carolina, and Towns, Union, and Fannin Counties, Georgia. The viticultural area does not lie within or contain any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated December 10, 2013, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) authorizes the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and a delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes the standards for petitions for the establishment of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;

- A narrative description of the features of the proposed AVA that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Upper Hiwassee Highlands Petition

TTB received a petition from Eric Carlson, owner of Calaboose Cellars, on behalf of himself and members of the Vineyard and Winery Operators of the Upper Hiwassee River Basin group, proposing the establishment of the approximately 690-square mile “Upper Hiwassee Highlands” AVA. The proposed AVA is located in the southern Appalachian Mountains within the upper Hiwassee River basin in all or portions of Cherokee and Clay Counties in southwestern North Carolina and Towns, Union, and Fannin Counties in northwestern Georgia. The proposed AVA contains 26 commercially producing vineyards, growing approximately 54 acres of French–American hybrids, American grape varieties, and *Vitis vinifera*. According to the petition, present vineyard operators estimate they will expand their plantings by an additional 75.5 acres within the next 5 years. Five wineries were operating within the proposed AVA at the time the petition was submitted. According to the petition, the

distinguishing features of the proposed Upper Hiwassee Highlands AVA include topography, temperature, and soils.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 139 in the **Federal Register** on July 12, 2013 (78 FR 41891), proposing to establish the Upper Hiwassee Highlands AVA. In the document, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The distinguishing features of the proposed AVA include topography, temperature, and soils. The document also compared the distinguishing features of the proposed AVA to the surrounding areas. For a description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 139.

In Notice No. 139, TTB solicited comments on the accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. The comment period closed on September 10, 2013.

In response to Notice No. 139, TTB received a total of 37 comments, all of which supported the establishment of the Upper Hiwassee Highlands AVA. Among the commenters were the Clay County (NC) Chamber of Commerce; the Clay County Travel and Tourism Board of Directors; the Clay County Economic Development Commission; the Cherokee County (NC) Director of Economic Development; the Cherokee County Board of Commissioners; the Cherokee County Tourism Development Authority; the Cherokee County Chamber of

Commerce; the Agricultural Extension Agent for Cherokee County; the Director of Economic Development for Tri-County Community College in Murphy, North Carolina; Southern Appalachian Family Farms, which promotes local and alternative sustainable markets for agricultural products; the Director of Fermentation Sciences at Appalachian State University; the Georgia Department of Agriculture; the Tourism Division of the Georgia Department of Economic Development; the Towns County (GA) Chamber of Commerce; a Commissioner for Union County (GA); and the Blairsville–Union County Chamber of Commerce. After the comment period closed, TTB received a comment by mail from Senator Johnny Isakson of Georgia, expressing support for the proposed AVA. The Senator’s comment was added to the rulemaking docket. TTB received no comments opposing the Upper Hiwassee Highlands AVA, as proposed.

TTB Determination

After careful review of the petition and the comments received in response to Notice No. 139, TTB finds that the evidence provided by the petitioner supports the establishment of the approximately 690-square mile Upper Hiwassee Highlands AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB establishes the “Upper Hiwassee Highlands” AVA in Cherokee and Clay Counties, North Carolina, and Towns, Union, and Fannin Counties, Georgia, effective 30 days from the publication date of this document.

Boundary Description

See the narrative description of the boundary of the AVA in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this AVA, its name, "Upper Hiwassee Highlands," will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulation clarifies this point. Once this final rule becomes effective, wine bottlers using the name "Upper Hiwassee Highlands" in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin.

The establishment of the Upper Hiwassee Highlands AVA will not affect any existing AVA. The establishment of the Upper Hiwassee Highlands AVA will allow vintners to use "Upper Hiwassee Highlands" as an appellation of origin for wines made from grapes grown within the Upper Hiwassee Highlands AVA, if the wines meet the eligibility requirements for the appellation.

For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from

grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance, and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Subpart C is amended by adding § 9.234 to read as follows:

§ 9.234 Upper Hiwassee Highlands.

(a) Name. The name of the viticultural area described in this section is “Upper Hiwassee Highlands”. For purposes of part 4 of this chapter, “Upper Hiwassee Highlands” is a term of viticultural significance.

(b) Approved maps. The 24 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Upper Hiwassee Highlands viticultural area are titled:

- (1) Unaka, NC/TN, 1957; photorevised 1978;
- (2) McDaniel Bald, NC/TN, 1957; photoinspected 1976;
- (3) Marble, NC, 1938; photorevised 1990;

- (4) Andrews, NC, 1938; photorevised 1990;
- (5) Topton, NC, 1957; photoinspected 1976;
- (6) Peachtree, NC, 1937; photorevised 1973;
- (7) Hayesville, NC, 1966; photorevised 1978; photoinspected 1987;
- (8) Shooting Creek, NC, 1957; photorevised 1990;
- (9) Rainbow Springs, NC, 1957; photorevised 1978;
- (10) Macedonia, GA/NC, 1988;
- (11) Hightower Bald, GA/NC, 1988;
- (12) Tray Mountain, GA, 1957; photorevised 1985;
- (13) Jacks Gap, GA, 1988;
- (14) Hiawassee, GA/NC, 1988;
- (15) Blairsville, GA/NC, 1988;
- (16) Cowrock, GA, 1988;
- (17) Coosa Bald, GA, 1988;
- (18) Neels Gap, GA, 1988;
- (19) Mulky Gap, GA, 1965;
- (20) Wilscot, GA, 1947;
- (21) Nottely Dam, GA/NC, 1988;
- (22) Culberson, NC/GA, 1988;
- (23) Persimmon Creek, NC, 1957; photorevised 1978; and
- (24) Isabella, TN/NC, 1957; photorevised 1978.

(c) Boundary. The Upper Hiwassee Highlands viticultural area is located in Cherokee and Clay Counties, North Carolina, and Towns, Union, and Fannin

Counties, Georgia. The boundary of the Upper Hiwassee Highlands viticultural area is as described below:

(1) The beginning point is in Cherokee County, North Carolina, on the Unaka map at the intersection of the northwestern end of the Hiwassee Dam and an unnamed light-duty road known locally as Hiwassee Dam Access Road.

(2) From the beginning point, proceed northwesterly on Hiwassee Dam Access Road approximately 4.2 miles to the road's intersection with an unnamed light-duty road known locally as Joe Brown Highway; then

(3) Proceed northeasterly on Joe Brown Highway approximately 1.4 miles to the highway's intersection with an unnamed light-duty road known locally as Burrell Mountain Road; then

(4) Proceed east-northeasterly along a straight line (drawn from the intersection of Joe Brown Highway and Burrell Mountain Road to the peak of Bird Knob) to the point where the line intersects the 2,400-foot elevation line west of Bird Knob; then

(5) Proceed initially southerly and then easterly along the meandering 2,400-foot elevation line and continue to follow the elevation line in an overall clockwise direction through Cherokee and Clay Counties, North Carolina, and then Towns and Union Counties, Georgia, crossing over as necessary the McDaniel Bald, Marble, Andrews, Topton, Peachtree, Hayesville, Shooting Creek, Rainbow Springs, Macedonia, Hightower Bald, Tray Mountain, Jacks Gap, Hiwassee, Blairsville, Cowrock, Coosa Bald, Neels Gap, and Mulky Gap

maps and ending on the Wilscot map, at the intersection of the 2,400-foot elevation line with the Union–Fannin County boundary line at Skeenah Gap; then

(6) Proceed northerly along the meandering Union–Fannin County boundary line, crossing over the Mulky Gap and Nottely Dam maps and onto the Culberson map, to the summit of High Top Mountain; then

(7) Proceed northwesterly in a straight line approximately one mile to the intersection of two unnamed light-duty roads known locally as Cutcane Road and Mt. Herman Road, near Mt. Herman Church; then

(8) Proceed northwesterly on Mt. Herman Road approximately one mile to the road's intersection with State Spur 60 (Murphy Highway); then

(9) Proceed southwesterly on State Spur 60 (Murphy Highway) approximately 2 miles to the road's intersection with an unnamed light-duty road known locally as Knollwood Road; then

(10) Proceed northwesterly in a straight line approximately 1.75 miles to the summit of Watson Mountain; then

(11) Proceed northeasterly in a straight line approximately 2.15 miles, crossing onto the Persimmon Creek map, to the line's intersection with the wagon and jeep track at the southernmost summit of Vance Mountain in Cherokee County, North Carolina; then

(12) Proceed north-northwesterly along the wagon and jeep track approximately 0.8 mile to the track's intersection with a marked foot trail near the 2,200-foot elevation line on the northern spur of Vance Mountain; then

(13) Proceed north-northwesterly along the foot trail approximately 0.5 mile to the trail's intersection with an unnamed road known locally as Wallace Road, and then continue north-northwesterly along Wallace Road approximately 0.4 mile to the road's intersection with U.S. Highway 64 near Hothouse; then

(14) Proceed westerly along U.S. Highway 64 approximately one mile to the highway's intersection with a marked northerly foot trail at Nealy Gap; then

(15) Proceed northerly along the marked foot trail, briefly crossing to and from the Isabella map, to the foot trail's intersection with an unnamed unimproved road, and then continue northerly on the unimproved road to its intersection with a second unnamed unimproved road known locally as Charles Laney Road, a total approximate distance of 0.75 mile; then

(16) Proceed northwesterly on the unnamed unimproved road known locally as Charles Laney Road, crossing onto the Isabella map, to the road's end, and then continue north-northwesterly on a marked foot trail to the trail's intersection with a wagon and jeep track at Wolfpen Gap, a total approximate distance of one mile; then

(17) Proceed easterly and then northeasterly along the wagon and jeep trail, crossing onto the Persimmon Creek map, to the 3,284-foot benchmark (MLB 1514) on Payne Mountain, then continue northeasterly on the wagon and jeep trail (which is partially marked as a foot trail) along the ridge line of Payne Mountain to the peak of Harris Top, then continue north-northeasterly on the wagon and jeep trail to the peak of Beaver Top, a total approximate distance of 2.75 miles; then

(18) Proceed northeasterly approximately 0.25 mile on the wagon and jeep trail to the point where the trail turns sharply to the southeast at a summit within the 2,480-foot elevation line on the western shoulder of Indian Grave Gap; then

(19) Proceed north in a straight line approximately 0.95 mile to the summit of Candy Mountain, and then continue north-northwest in a straight line approximately 0.45 mile to the line's intersection with an unnamed light-duty road known locally as Candy Mountain Road; then

(20) Proceed east-northeasterly on Candy Mountain Road approximately 0.8 mile to the 1,740-foot benchmark (BM HR 116); then

(21) Proceed northerly in a straight line approximately 1.2 miles to the southernmost peak of Ghormley Mountain (within the 2,440-foot elevation line); then

(22) Proceed north-northeast in a straight line approximately 1.3 miles to the intersection of an unnamed light-duty road known locally as Lower Bear Paw Road and an unnamed unimproved road just south of Reids Chapel (the chapel is shown along the southern edge of the Unaka map); then

(23) Proceed northerly on Lower Bear Paw Road approximately 0.35 mile, crossing onto the Unaka map, to the road's intersection with an unnamed light-duty road known locally as Hiwassee Dam Access Road; then

(24) Proceed easterly and then northerly along Hiwassee Dam Access Road approximately 2.9 miles, returning to the beginning point at the northwestern end of Hiwassee Dam.

Signed: April 15, 2014.

John J. Manfreda,

Administrator.

Approved: May 7, 2014.

Timothy E. Skud,

Deputy Assistant Secretary
(Tax, Trade, and Tariff Policy).

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