



[Billing Code: 4810–31–P]

## **DEPARTMENT OF THE TREASURY**

### **Alcohol and Tobacco Tax and Trade Bureau**

#### **27 CFR Part 9**

**[Docket No. TTB–2019–0006; T.D. TTB–163; Ref: Notice No. 184]**

**RIN: 1513–AC42**

### **Establishment of the Candy Mountain Viticultural Area and Modification of the Yakima Valley 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 815-acre “Candy Mountain” viticultural area in Benton County, Washington. TTB is also expanding the boundary of the existing 1,093-square mile Yakima Valley viticultural area by approximately 72 acres in order to avoid a partial overlap with the newly established Candy Mountain viticultural area. Both the existing Yakima Valley viticultural area and the newly established Candy Mountain viticultural area are located entirely within the existing Columbia Valley 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 FROM 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 the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate 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 (27 CFR 4.25(e)(2)) 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 standards for petitions for the establishment or modification 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 affecting 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;
- If the proposed AVA is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

### **Candy Mountain Petition**

TTB received a petition from Dr. Kevin R. Pogue, a professor of geology at Whitman College, proposing the establishment of the “Candy Mountain” AVA in Benton County, Washington. The proposed Candy Mountain AVA lies entirely within the established Columbia Valley AVA (27 CFR 9.74) and partially within the established Yakima Valley AVA (27 CFR 9.69). To avoid the partial overlap, the petition also proposed expanding the Yakima Valley AVA by approximately

72 acres so that the entire proposed Candy Mountain AVA would be within the established AVA. Dr. Pogue submitted the petition on behalf of the following industry members with wine businesses within the proposed AVA: Ramer Holtan, who is developing a commercial wine grape vineyard on Candy Mountain; Premiere Columbia Partners LLC, owners of Candy Mountain Vineyard; and Paul and Vickie Kitzke, owners of Kitzke Cellars.

Within the 815-acre proposed AVA, there are currently two producing commercial vineyards, Candy Mountain Vineyard and Kitzke Cellars, which cover a total of approximately 54 acres. Additionally, Mr. Holtan has secured long-term leases from the Washington Department of Natural Resources to plant 200 additional acres of vineyards within the proposed AVA. A copy of the lease was included in the petition as evidence of Mr. Holtan's intent to grow wine grapes. Currently, Kitzke Cellars is the only winery within the proposed AVA, although the petition notes that other wineries in Washington produce wines from grapes grown within the proposed AVA. According to the petition, the distinguishing features of the proposed Candy Mountain AVA are its soils and topography.

The soils of the proposed Candy Mountain AVA are developed from wind-deposited silt (loess) and fine sand overlying sediment. The sediment is a mixture of gravel and sand that was derived directly from surging ice-age flood waters and also includes silt and fine sand that settled out of suspension when the flood waters pooled behind downstream topographic restrictions. The loess and sediment, in turn, both overlay basalt bedrock. The thickness of the flood-water sediment within the proposed Candy Mountain AVA gradually decreases

as one moves up the mountain, and the sediment is not found within the upper 70 feet of the proposed AVA. By contrast, the regions to the north, south, and west of the mountain and the proposed Candy Mountain AVA are at lower elevations and, therefore, have thicker accumulations of flood sediments in their soils.

According to the petition, the soils of the proposed AVA have an effect on viticulture. The soils are fairly loose, which allows for root expansion. The soils also do not have a large water holding capacity, meaning that vineyard owners must monitor soil moisture carefully to ensure the vines have adequate access to water. Finally, the thin soils allow roots to come into contact with the underlying basalt bedrock, which is comprised of calcium-rich feldspars and other minerals that are rich in iron and magnesium, such as pyroxene and olivine. The petition states that these minerals and nutrients are only present in the bedrock, so vines planted in the surrounding regions where the soil is thicker do not have the same access to these elements as vines planted within the proposed AVA.

Topography also distinguishes the proposed Candy Mountain AVA from the surrounding regions. The proposed Candy Mountain AVA is located on the southwest-facing slope of Candy Mountain. Within the proposed AVA, elevations range from 640 feet to 1,320 feet, and slope angles are gentle to moderate and range from 2 to 20 degrees. Gentle slope angles facilitate mechanized vineyard maintenance and harvest. A south-facing slope aspect increases the amount per unit area of solar radiation that reaches the surface and promotes photosynthesis in the grape vines, as well as grape development and maturation.

By contrast, the valley floor surrounding both the entire Candy Mountain and the proposed Candy Mountain AVA is essentially flat, with slope angles of less than 2 degrees, and is susceptible to cold air pooling and the associated frosts and freezes. Additionally, much of the land immediately surrounding the proposed AVA is a valley floor with elevations below 640 feet. The exception is the northeastern side of Candy Mountain, which has similar elevations to the proposed Candy Mountain AVA but was excluded from the proposed AVA due to northeasterly slope aspect and steep slope angles of up to 60 degrees.

### **Proposed Modification of the Yakima Valley AVA**

As previously noted, the petition to establish the proposed Candy Mountain AVA also requested an expansion of the established 1,093-square mile Yakima Valley AVA. The proposed Candy Mountain AVA is located in the northeastern portion of the Yakima Valley AVA. Most of the proposed Candy Mountain AVA would, if established, be located within the current boundary of the Yakima Valley AVA. However, unless the boundary of the Yakima Valley AVA is modified, a small portion of the proposed Candy Mountain AVA would be outside the Yakima Valley AVA. The proposed modification of the Yakima Valley AVA boundary would increase the size of the established AVA by 72 acres and would result in the entire proposed Candy Mountain AVA being within the Yakima Valley AVA.

The petition states that the vineyards within the proposed expansion area are within the proposed Candy Mountain AVA but lie approximately 600 feet outside of the current boundary of the Yakima Valley AVA. The vineyards did not

exist at the time the Yakima Valley AVA was established. However, the petition states that the proposed expansion area is associated with both the feature known as the Yakima Valley and the Yakima Valley AVA. For example, the proposed expansion area is part of the larger Yakima River drainage basin, which is a characteristic of the Yakima Valley AVA. Additionally, the petition states that the owners of Kitzke Cellars, who manage the seven acres of vineyards within the proposed expansion area, have aligned themselves with the Yakima Valley AVA through their membership in Wine Yakima Valley, which is the Yakima Valley AVA's marketing organization.

The petition asserts that the proposed expansion area has similar soils, elevation, slope angles, and slope aspect as the remainder of the proposed Candy Mountain AVA, which is within the Yakima Valley AVA. The petition also describes the general similarities that the entire proposed Candy Mountain AVA shares with the established Yakima Valley AVA, such as similar soil series and geology.

### **Notice of Proposed Rulemaking and Comments Received**

TTB published Notice No. 184 in the **Federal Register** on August 19, 2019 (84 FR 42863), proposing to establish the Candy Mountain AVA and expand the Yakima Valley AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA and the proposed AVA expansion area. The notice also compared the distinguishing features of the proposed AVA and the proposed expansion area to the surrounding areas. For a detailed description of the

evidence relating to the name, boundary, and distinguishing features of the proposed AVA and boundary modification, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 184.

In Notice No. 184, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. In addition, given the proposed Candy Mountain AVA's location within the Yakima Valley and Columbia Valley AVAs, TTB solicited comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the two established AVAs. TTB also requested comments on whether the geographic features of the proposed AVA are so distinguishable from the two established AVAs that the proposed AVA should no longer be part of the established AVAs. The comment period closed October 18, 2019.

In response to Notice No. 184, TTB received a total of two comments. One of the comments was from a winery owner who sources grapes from both the proposed Candy Mountain AVA and the adjacent Red Mountain AVA (27 CFR 9.167). The commenter supports the proposed Candy Mountain AVA because "there do appear to be differences due to a sense of place between those two adjacent (proposed) AVAs." The second comment was from the petitioner, Dr. Kevin Pogue. In his comment, Dr. Pogue pointed out that the proposed rule incorrectly identified the size of the Yakima Valley AVA as 1,093 acres instead of 1,093 square miles. TTB notes that it has corrected the

description of the size of the Yakima Valley AVA in this final rule document.

Neither of the comments mentioned the proposed expansion of the established Yakima Valley AVA or the inclusion of the proposed Candy Mountain AVA within the established Yakima Valley or Columbia Valley AVAs.

### **TTB Determination**

After careful review of the petition and the comments received in response to Notice No. 184, TTB finds that the evidence provided by the petitioner supports the establishment of the Candy Mountain AVA and the modification of the Yakima Valley AVA boundary. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the “Candy Mountain” AVA in Benton County, Washington, and modifies the boundary of the Yakima Valley AVA effective 30 days from the publication date of this document.

TTB has also determined that the Candy Mountain AVA will remain part of both the established Columbia Valley AVA and the Yakima Valley AVA. As discussed in Notice No. 184, the Candy Mountain AVA shares some broad characteristics with both established AVAs. For example, the proposed AVA is located within the Yakima River drainage basin, which is a characteristic of the Yakima Valley AVA. The Warden–Shano Association and the Scootenay-Starbuck Association soils are found within both the proposed AVA and the Yakima Valley AVA. Elevations within the proposed AVA are under 2,000 feet, which is a general characteristic of the Columbia Valley AVA. However, the Candy Mountain AVA is located on an isolated mountain, whereas the majority of

the Yakima Valley and Columbia Valley AVAs are described as broad, flat valleys. Additionally, the proposed AVA has steeper slope angles than much of the land within the Columbia Valley and Yakima Valley AVAs.

### **Boundary Description**

See the narrative description of the boundary of the Candy Mountain AVA and the Yakima Valley AVA boundary modification in the regulatory text published at the end of this final rule.

### **Maps**

The petitioners provided the required maps, and they are listed below in the regulatory text. The Candy Mountain AVA boundary and the modified Yakima Valley AVA boundary may also be viewed on the AVA Map Explorer on the TTB website, at <https://www.ttb.gov/wine/ava-map-explorer>.

### **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. 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.

With the establishment of the Candy Mountain AVA, its name, “Candy Mountain,” 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 regulations clarifies this point. Consequently, wine bottlers using the name “Candy Mountain” 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 Candy Mountain AVA will not affect the existing Columbia Valley or Yakima Valley AVAs, and any bottlers using “Columbia Valley” or “Yakima Valley” as an appellation of origin or in a brand name for wines made from grapes grown within the Columbia Valley or Yakima Valley AVAs will not be affected by the establishment of this new AVA. The establishment of the Candy Mountain AVA will allow vintners to use “Candy Mountain,” “Yakima Valley,” and “Columbia Valley” as appellations of origin for wines made primarily from grapes grown within the Candy Mountain AVA if the wines meet the eligibility requirements for these appellations.

The modification of the Yakima Valley AVA boundary will allow vintners to use “Yakima Valley,” “Columbia Valley,” and “Candy Mountain” as appellations of

origin for wines made primarily from grapes grown within the expansion area if the wines meet the eligibility requirements for these appellations.

### **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 final 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. Amend § 9.69 by revising paragraphs (b) and (c)(4), redesignating paragraphs (c)(5) through (c)(10) as paragraphs (c)(11) through (16), and adding new paragraphs (c)(5) through (c)(10) to read as follows:

**§ 9.69 Yakima Valley.**

\* \* \* \* \*

(b) *Approved maps.* The United States Geological Survey (USGS) maps used to determine the boundary of the Yakima Valley viticultural area are titled:

(1) Walla Walla, Washington (1:250,000 scale), 1953; limited revision 1963;

(2) Yakima, Washington (1:250,000 scale), 1958; revised 1971;

(3) Benton City, WA (1:24,000 scale), 2013;

(4) Badger Mountain, Washington (1:24,000 scale), 2013; and

(5) Richland, Washington (1:24,000 scale), 2014.

\* \* \* \* \*

(c) \* \* \*

(4) Then southeast, crossing onto the Benton City map, to the top of Red Mountain;

(5) Then southeast to a point on East Kennedy Road approximately 2,500 feet east of an intermittent stream flowing north into Lost Lake;

(6) Then southeast across the top of Candy Mountain, crossing onto the Badger Mountain map, and continuing to the intersection with the southernmost point of an unnamed road known locally as Arena Road; then

(7) Proceed north for 0.45 mile along Arena Road, crossing onto the Richland map, to the intersection with the 670-foot elevation contour; then

(8) Proceed generally east for 0.4 mile along the elevation contour to the intersection with Dallas Road; then

(9) Proceed south in a straight line for 0.5 mile, crossing onto the Badger Mountain map, to the intersection with Interstate 182; then

(10) Proceed southeast in a straight line, crossing onto the Walla Walla map, to the top of Badger Mountain;

\* \* \* \* \*

3. Add § 9.272 to read as follows:

**§ 9.272 Candy Mountain.**

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

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

(1) Badger Mountain, Washington, 2013;

(2) Benton City, Washington, 2013; and

(3) Richland, Washington, 2014.

(c) *Boundary.* The Candy Mountain viticultural area is located in Benton County in Washington. The boundary of the Candy Mountain viticultural area is as described below:

(1) The beginning point is on the Badger Mountain map at the southernmost point of an unnamed road known locally as Arena Road. From the beginning point, proceed northwest in a straight line for approximately 1.85 miles, crossing onto the Benton City map, to the intersection with East Kennedy Road NE; then

(2) Proceed westerly along East Kennedy Road NE for approximately 2,500 feet to the intersection with an intermittent creek approximately 0.8 mile south of Lost Lake; then

(3) Proceed southeasterly along the easternmost fork of the intermittent creek to the intersection with Interstate 82; then

(4) Proceed southeast along Interstate 82 for 2.25 miles, crossing over the Richland map and onto the Badger Mountain map, and continuing along the ramp onto Interstate 182 to a point due south of the intersection of Dallas Road and an unnamed road known locally as East 260 Private Road NE; then

(5) Proceed north in a straight line for 0.5 mile, crossing onto the Richland map, to the intersection of Dallas Road and the 670-foot elevation contour; then

(6) Proceed west along the 670-foot elevation contour for 0.4 mile to the intersection with Arena Road; then

(7) Proceed southerly along Arena Road for approximately 0.45 miles, returning to the beginning point.

Signed: April 14, 2020.

**Mary G. Ryan,**

*Acting Administrator.*

Approved: August 12, 2020.

**Timothy E. Skud,**

*Deputy Assistant Secretary  
Tax, Trade, and Tariff Policy.*

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