



DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB-2020-0006; T.D. TTB-164; Ref: Notice No. 191]

RIN: 1513-AC69

Establishment of the Tehachapi Mountains 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 58,000-acre “Tehachapi Mountains” viticultural area in Kern County, California. The Tehachapi Mountains viticultural area is not located within, nor does it contain, any 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 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; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Tehachapi Mountains Petition

TTB received a petition from Julie Bell of Per La Vita LLC, on behalf of local vineyard owners and winemakers, proposing to establish the “Tehachapi Mountains” AVA. The proposed AVA is located in Kern County, California, and is not within any established AVA. The proposed Tehachapi Mountains AVA contains approximately 58,000 acres and has 6 commercially-producing vineyards covering approximately 25 acres, as well as 1 winery. The distinguishing features of the proposed Tehachapi Mountains AVA include its topography and climate.

The proposed Tehachapi Mountains AVA is a broad, saddle-shaped region of mountain foot slopes, high valleys and rolling hills situated at the summit of the southernmost pass of the Sierra Nevada mountain range. The proposed AVA has an east-west orientation, and the terrain at the east and west ends of the “saddle” rise sharply before falling away to the lower elevations of the San Joaquin Valley, to the west, and the Mojave Desert, to the east. Elevations within the proposed AVA range from 3,600 and 5,400 feet, with the majority of the area situated between 3,800 and 4,600 feet. Slope angles average between 3 and 11 degrees within the proposed AVA. According to the petition, the high altitude of the proposed AVA exposes grapes to higher intensity ultraviolet light,

which stimulates synthesis of phenolic molecules and produces deep colors and thick skins. Additionally, the gentle slope angles reduce the risk of erosion and allow cold air to drain away from vineyards planted in the proposed AVA.

The petition states that topography also affects the climate of the proposed Tehachapi Mountains AVA and allows for successful viticulture, even at such high elevation. The petition notes that wine grapes are generally grown at elevations below 3,000 feet in the United States and around the world, due to colder temperatures at higher elevations that can permanently damage or kill vines. However, the proposed AVA's location within a mountain pass allows prevailing west winds from the San Joaquin Valley and east winds from the Mojave Desert to bring warm air from those regions into the proposed AVA. As a result, the proposed AVA has an average growing season of 198 days and accumulates an average of 2,762 growing degree days¹ (GDDs) annually, both of which are sufficient for ripening late season varieties such as syrah, zinfandel, and cabernet sauvignon. Warm air from the neighboring valleys also results in typical winter low temperatures within the proposed AVA that range from 35 to 26 degrees Fahrenheit. The petition notes that grapevines can suffer permanent damage at temperatures between 0 and -5 degrees Fahrenheit, so vines grown in the proposed AVA are not at risk from serious frost damage.

The Tehachapi Mountains range continues to the south of the proposed AVA. Elevations rise to over 7,000 feet, and slope angles are over 30 degrees. To the north of the proposed Tehachapi Mountains AVA are the Piute Mountains, which have elevations of over 6,000 feet and also have slope angles over 30

¹ See Albert J. Winkler et al., *General Viticulture* (Berkeley: University of California Press, 2nd ed. 1974), pages 61–64. In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual GDDs, defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees F, the minimum temperature required for grapevine growth.

degrees. In portions of the northern region that are not exposed to the Mojave Desert or San Joaquin Valley, growing seasons are shorter and GDD accumulations are lower than within the proposed AVA. For example, to the north-northwest of the proposed AVA, the community of Johnsondale is at an elevation of 4,700 feet, has a growing season of 139 days, and accumulates an average of 2,149 GDDs. However, regions with more direct exposure to the desert or the valley can have longer growing seasons and greater GDD accumulations. For example, the community of Walker Pass, to the north-northeast of the proposed AVA at an elevation of 5,572 feet, is more exposed to the Mojave Desert than the proposed AVA and has an average growing season of 216 days and accumulates an average of 3,834 GDDs.

To the east of the proposed Tehachapi Mountains AVA is the Mojave Desert, which has an average elevation of 2,600 feet. The growing season is longer than within the proposed AVA, averaging 231 days at Edwards Air Force Base. GDD accumulations are also much higher, averaging 4,881 annually. To the west of the proposed AVA is the San Joaquin Valley, where elevations drop below 500 feet near Bakersfield. The growing season length in Bakersfield averages 349 days, and an average annual GDD accumulation of 5,521.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 191 in the **Federal Register** on June 26, 2020 (85 FR 38345), proposing to establish the Tehachapi Mountains AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also compared the distinguishing features of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison

of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 191.

In Notice No. 191, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. The comment period closed August 25, 2020.

In response to Notice No. 191, TTB received a total of eight comments. The commenters included the Tehachapi city manager, the Mayor of Tehachapi City and Tehachapi City Council, the Second District supervisor for Kern County, California State Assemblyman Vince Fong, U.S. Representative Kevin McCarthy, and local wine industry members. All of the comments supported the establishment of the proposed Tehachapi Mountains AVA.

TTB Determination

After careful review of the petition and the comments received in response to Notice No. 191, TTB finds that the evidence provided by the petitioner supports the establishment of the Tehachapi Mountains AVA. 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 “Tehachapi Mountains” AVA in Kern County, California, effective 30 days from the publication date of this document.

Boundary Description

See the narrative description of the boundary of the Tehachapi Mountains AVA 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. You may also view the Tehachapi Mountains AVA boundary

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 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 27 CFR 4.39(i)(2) for details.

With the establishment of the Tehachapi Mountains AVA, its name, "Tehachapi Mountains," 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 "Tehachapi Mountains" 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. TTB is not designating "Tehachapi," standing alone, as a term of viticultural significance if the proposed AVA is established, in order to avoid potential conflicts with current label holders who use the word "Tehachapi" in a brand name or a fanciful name on their labels.

Accordingly, the proposed part 9 regulatory text set forth in this document specifies only the full name “Tehachapi Mountains” as a term of viticultural significance for purposes of part 4 of the TTB regulations.

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. Subpart C is amended by adding § 9.273 to read as follows:

§ 9.273 Tehachapi Mountains.

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

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

- (1) Bear Mountain, CA, 2015;
- (2) Keene, CA, 2015;
- (3) Cummings Mountain, CA, 2015;
- (4) Tehachapi North, CA, 2015;
- (5) Tehachapi NE, CA, 2015;
- (6) Monolith, CA, 2015;
- (7) Tehachapi South, CA, 2015; and
- (8) Tejon Ranch, CA, 2015.

(c) *Boundary.* The Tehachapi Mountains viticultural area is located in Kern County, California. The boundary of the Tehachapi Mountains viticultural area is as described below:

(1) The beginning point is on the Bear Mountain map at the intersection of the 4,800-foot elevation contour and an unnamed road known locally as Skyline Drive. From the beginning point, proceed easterly along the 4,800-foot elevation contour, crossing onto the Keene map, to the intersection of the 4,800-foot elevation contour and Horizon Court; then

(2) Proceed south along Horizon Court to its intersection with the 4,600-foot elevation contour; then

(3) Proceed east, then north along the meandering 4,600-foot elevation contour to its intersection with Shenandoah Place; then

(4) Proceed southeast in a straight line to the 4,400-foot elevation contour south of an unnamed road known locally as Big Sky Court; then

(5) Proceed east, then north along the meandering 4,400-foot elevation contour to its intersection with Bear Valley Road; then

(6) Proceed east in a straight line to the 4,600-foot elevation contour; then

(7) Proceed southeasterly along the 4,600-foot elevation contour, crossing onto the Cummings Mountain map and continuing southeasterly, then northerly along the 4,600-foot elevation contour, crossing back onto the Keene map, and continuing northerly along the 4,600-foot elevation contour to a point due west of the intersection of Marcel Drive and an unnamed road known locally as Woodford-Tehachapi Road; then

(8) Proceed east in a straight line to the intersection of Woodford-Tehachapi Road and Marcel Drive; then

(9) Proceed east in a straight line, crossing onto the Tehachapi North map and crossing Tehachapi Creek, to the 4,400-foot elevation contour northeast of the community of Cable, California; then

(10) Proceed easterly along the 4,400-foot elevation contour, crossing onto the Tehachapi NE map, and continuing southeasterly along the 4,400-foot elevation contour to a point due west of the terminus of Zephyr Court; then

(11) Proceed east in a straight line to the terminus of Zephyr Court; then

(12) Proceed east in a straight line to Sand Canyon Road; then

(13) Proceed south along Sand Canyon Road, crossing onto the Monolith map, to its intersection with East Tehachapi Boulevard; then

(14) Proceed southwesterly in a straight line, crossing the railroad tracks and State Route 58, to the 4,200-foot elevation contour; then

(15) Proceed westerly along the 4,200-foot elevation contour to its intersection with an unnamed intermittent creek; then

(16) Proceed southwest in a straight line to the 4,400-foot elevation contour; then

(17) Proceed west along the 4,400-foot elevation contour, crossing onto the Tehachapi South map, to its intersection with Tehachapi-Willow Springs Road; then

(18) Proceed south along Tehachapi-Willow Springs Road to its intersection with the 4,520-foot elevation contour; then

(19) Proceed west in a straight line to the intersection of the 4,840-foot elevation contour and Snowshoe Lane; then

(20) Proceed north in a straight line to the 4,800-foot elevation contour; then

(21) Proceed westerly along the 4,800-foot elevation contour, crossing onto the Cummings Mountain map and over two unnamed intermittent streams, and continuing to the intersection of the 4,800-foot elevation contour and a third unnamed intermittent stream; then

(22) Proceed south in a straight line to the 5,200-foot elevation contour; then

(23) Proceed southerly along the 5,200-foot elevation contour to a point northeast of the southern terminus of Arosa Road; then

(24) Proceed east in a straight line, crossing onto the Tehachapi South map and over an unnamed road known locally as Water Canyon Road, to the 5,400-foot elevation contour; then

(25) Proceed southeasterly, then south, then southwesterly along the 5,400-foot elevation contour, crossing onto the Cummings Mountain map and continuing to the intersection of the 5,400-foot elevation contour with an unnamed road known locally as Matterhorn Drive; then

(26) Proceed west in a straight line, crossing Mountain Climber Way, to the 4,600-foot elevation contour; then

(27) Proceed westerly along the 4,600-foot elevation contour to its intersection with High Gun Drive; then

(28) Proceed south in a straight line to the second intersection of the line with the 5,000-foot elevation contour; then

(29) Proceed west in a straight line, crossing onto the Tejon Ranch map, to the line's intersection with an unnamed 4-wheel drive road; then

(30) Proceed northwesterly along the 4-wheel drive road to its intersection with the southern terminus of an unnamed road known locally as Carlisle Drive; then

(31) Proceed southwesterly in a straight line to an unmarked 4,680-foot summit; then

(32) Proceed north in a straight line to the 3,640-foot elevation contour; then

(33) Proceed west in a straight line to the 3,600-foot elevation contour; then

(34) Proceed west, then northwesterly along the 3,600-foot elevation contour to its intersection with an unnamed intermittent stream northwest of Jack Springs Road; then

(35) Proceed northeast in a straight line, crossing onto the Bear Mountain map, and continuing to the intersection of the 4,800-foot elevation contour and an unnamed intermittent creek west of Rockspring Court; then

(36) Proceed north along the 4,800-foot elevation to a point due west of the intersection of the 4,800-foot elevation point and an unnamed road known locally as Skyline Drive; then

(37) Proceed east in a straight line to the beginning point.

Signed: October 26, 2020.

Mary G. Ryan,

Administrator.

Approved: November 9, 2020.

Timothy E. Skud,

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

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