



DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB-2022-0013; T.D. TTB-189; Ref: Notice No. 218]

RIN: 1513-AC91

Establishment of the Winters 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 7,296-acre “Winters Highlands” viticultural area in portions of Solano and Yolo Counties in California. The Winters Highlands viticultural area is not located within 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 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). In addition, the Secretary of the Treasury has delegated certain administrative and enforcement authorities to TTB through Treasury Order 120–01.

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.

Petition to Establish the Winters Highlands AVA

TTB received a petition on behalf of Berryessa Gap Vineyards proposing the establishment of the “Winters Highlands” AVA in portions of Solano and Yolo counties in California. The proposed Winters Highlands AVA covers

approximately 7,296 acres and is not located within any other AVA. There are planted vineyards covering approximately 134 acres within the proposed AVA, as well as three wineries. According to the petition, an additional 60 acres of vineyards are planned for planting in the next few years. According to the petition, the distinguishing features of the proposed Winters Highlands AVA are its climate, specifically, its temperature, precipitation, and relative air humidity, and its soils.

According to the petition, the proposed AVA is located on the eastern side of the Coast Ranges, which provide shelter from most of the cool air blowing eastward from the Pacific Ocean. However, the Berryessa Gap, a break in the Coast Ranges where Putah Creek flows into the manmade Lake Berryessa, does allow some cool air from the Pacific Ocean directly into the proposed AVA, particularly in the evenings. The petition states that, as a result, the proposed AVA tends to have cooler evenings than the more inland regions to the north. The petition also says that the proposed AVA has more growing degree days¹ (GDDs) than surrounding areas and a wide difference between daily minimum and maximum temperatures. This set of conditions promotes the growth of Mediterranean-type grapes.

The GDD data indicates that the proposed Winters Highlands AVA has higher average GDD accumulations than all surrounding regions except those to the northeast. The proposed AVA has a greater average monthly maximum temperature than all the other regions, except the Woodlands region to the northeast from May to September, when temperature differences are most

¹ Heat summation is calculated as the sum of the mean monthly temperature above 50 degrees Fahrenheit (F) during the growing season from April 1 to October 31 and is expressed as growing degree days (GDDs). A baseline of 50 degrees F is used because there is almost no shoot growth below this temperature. See Albert J. Winkler et al., *General Viticulture* (Berkeley: University of California Press, 2nd ed. 1974), pages 67–71.

pronounced. From March to September, the average monthly minimum temperature of the proposed AVA is similar to locations east and northeast of the proposed AVA and higher than temperatures in the other surrounding locations. The petition includes frost-free data that indicates the proposed AVA has more frost-free days than any of the other locations except the region east of the proposed AVA. According to the petition, frost-free days are the criterion that determines the length of the growing season for wine grape production regions, since spring frost can damage the newly emerged shoots and fall frost can lead to berry damage and aging of the leaves, or leaf senescence. Precipitation amounts in the proposed AVA were similar to amounts in the region southeast of the proposed AVA; greater than the amounts in the regions to the southwest, east, and northeast; and lower than the amounts to the west during winter. Precipitation amounts greatly affect the level of water retained in the soil and decisions about vineyard irrigation during the growing season. Data for average relative air humidity suggests the proposed Winters Highlands AVA has lower humidity than all the surrounding regions throughout the year, except during October and November, when the humidity rises slightly and becomes similar to that of the region northeast of the proposed AVA. Air humidity during the growing season profoundly influences pest and disease control in the vineyards.

The proposed Winters Highlands AVA contains soils that are dominated by fine clay or loamy alfisols and inceptisols with gentle to steep slopes and a mean annual soil temperature between 15 to 22 degrees C. The petition also describes the soils as warm and somewhat dry in the summer and cool and wet in the winter. The soils within the proposed AVA are mostly well or moderately well drained, which is critical for root growth and respiration. The petition also

states that soils within the proposed AVA generally have a lower soil pH than those to the east. A higher soil pH could affect the availability of soil nutrients.

The petition states that soils found in the northeastern portion of the proposed AVA are very deep and derived from mixed sources on the alluvial fan, while soils found on the western and southeastern portions are relatively shallow and formed on the terraces from sedimentary rocks. North and south of the proposed AVA, the soils have a similar profile to those of the proposed AVA. However, according to the petition, soils with poor or somewhat poor drainage are more prevalent in the region to the north of the proposed AVA, while soils derived from sedimentary rocks, rather than alluvium, are more common in the region to the south. The regions east and southeast of the proposed AVA are dominated by soils formed from the alluvium of mixed sources. To the southwest of the proposed AVA, soils are mainly loamy or clay mollisols, vertisols, ultisols and alfisols on alluvial fans and terraces.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 218 in the **Federal Register** on November 28, 2022 (87 FR 72932), proposing to establish the Winters Highlands AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features of 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. 218. In Notice No. 218, TTB solicited comments on the sufficiency and accuracy of the name, boundary, and other required information submitted in support of the petition. The comment period closed on January 27, 2023.

In response to Notice No. 218, TTB received one comment. The commenter expressed their full support for the AVA, but also stated that the proposed AVA should be expanded to the west to incorporate additional area. They stated that they have 2 ranches in the area that they plan for future vineyards and would like the AVA to include their planned vineyards that border the proposed area. The commenter did not provide additional information regarding how the name, climate, and soil evidence might apply to the expansion area.

TTB Determination

After careful review of the petition and the comment received in response to Notice No. 218, TTB finds that the evidence provided by the petitioner supports establishing the Winters Highlands AVA as proposed. TTB is not expanding the boundary of the AVA as suggested by the comment due to a lack of information to support such a change. 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 “Winters Highlands” AVA in Solano and Yolo Counties, California, effective 30 days from the publication date of this document.

Boundary Description

See the narrative description of the boundary of the Winters Highlands 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. The Winters Highlands 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 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 Winters Highlands AVA, its name, "Winters 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 regulations clarifies this point. Consequently, wine bottlers using the name "Winters 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.

Establishing the Winters Highlands AVA will not affect any existing AVA. Establishing the Winters Highlands AVA will allow vintners to use "Winters Highlands" as an appellation of origin for wines made primarily from grapes

grown within the Winters Highlands AVA if the wines meet the eligibility requirements for the appellation.

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

Vonzella C. Johnson 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. Add § 9.290 to read as follows:

§ 9.290 Winters Highlands.

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

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

- (1) Winters, CA, 2018;
- (2) Allendale, CA, 2018;
- (3) Mount Vaca, CA, 2018; and
- (4) Monticello Dam, CA, 2018.

(c) *Boundary.* The Winters Highlands viticultural area is located in portions of Solano and Yolo Counties, California. The boundary of the Winters Highlands viticultural area is as follows:

(1) The boundary begins on the Winters map at the intersection of Putah Creek Road and Wintu Way. From the beginning point, proceed southeasterly along Wintu Way, crossing onto the Allendale map, to the terminus of Wintu Way; then

(2) Proceed south-southwest in a straight line for 1.05 miles to the eastern terminus of Morse Lane; then

(3) Proceed westerly along Morse Lane to its intersection with Olive School Lane; then

(4) Proceed north-northwest in a straight line for 2.52 miles, crossing over the northeastern corner of the Mount Vaca map and onto the Monticello Dam map, to the line’s intersection with Highway 128, approximately 2.78 miles west of the intersection of Highway 128 and County Road 89; then

(5) Proceed north in a straight line to the intersection of the line with the Chickahominy Slough; then

(6) Proceed east-southeast along the Chickahominy Slough, crossing onto the Winters map, to its intersection with the 170-foot elevation contour; then

(7) Proceed south-southeasterly along the 170-foot elevation contour to its intersection with the Winters Canal; then

(8) Proceed south along the Winters Canal to its intersection with the terminus of an unnamed local road; then

(9) Proceed due west in a straight line to the 200-foot elevation contour; then

(10) Proceed south in a straight line to the northern terminus of County Road 88; then

(11) Proceed south along County Road 88 to its southern terminus and continue south in a straight line to Valley Oak Drive; then

(12) Proceed southerly along Valley Oak Drive to its intersection with Highway 128; then

(13) Proceed southeasterly in a straight line for 1.04 miles, returning to the beginning point.

Signed: August 21, 2023

Mary G. Ryan,

Administrator.

Approved: August 22, 2023

Thomas C. West, Jr.,

Deputy Assistant Secretary (Tax Policy).