



DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB-2023-0010; Notice No. 228]

RIN: 1513-AD01

Proposed Establishment of the Conneaut Creek Viticultural Area

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the 70,437-acre “Conneaut Creek” American viticultural area (AVA) in Ashtabula County, Ohio. The proposed AVA is located entirely within the boundaries of the existing Lake Erie AVA. 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. TTB invites comments on these proposals.

DATES: TTB must receive your comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may electronically submit comments to TTB on this proposal, and view copies of this document, its supporting materials, and any comments TTB receives on it within Docket No. TTB-2023-0010 as posted on Regulations.gov (<https://www.regulations.gov>), the Federal e-rulemaking portal. Please see the “**Public Participation**” section of this document below for full details on how to comment on this proposal via Regulations.gov or U.S. mail, and for full details on how to obtain copies of this document, its supporting materials, and any comments related to this proposal.

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 provisions pursuant to section 1111(d) of the Homeland Security Act of 2002, as 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 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, once approved, a name and a delineated boundary codified 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 allows any interested party to 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 to establish or modify 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.
- 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.

Petition to Establish the Conneaut Creek AVA

TTB received a petition from Andrew Kirk, a research specialist at Ohio State University–Ashtabula Agricultural Research Station, proposing to establish the “Conneaut Creek” AVA on behalf of the Committee for Establishment of the “Conneaut Creek AVA,” comprised of local industry and institutional stakeholders. The proposed AVA is located in Ashtabula County, Ohio, and is entirely within the established Lake Erie AVA (27 CFR 9.83). The proposed AVA consists of the land within 2 miles of Conneaut Creek within the State of Ohio, for a total of approximately 37,116 acres. There are six commercial vineyards covering a total of approximately 45 acres within the proposed AVA, as well as three wineries. The distinguishing feature of the proposed Conneaut Creek AVA is its climate.

Proposed Conneaut Creek AVA

Name Evidence

The proposed AVA takes its name from Conneaut Creek, which runs through the region and empties into Lake Erie near the Ohio–Pennsylvania border. According to the petition, one of the earliest examples of the use of the name “Conneaut Creek” comes from the diary of Moses Cleveland, a surveyor who landed at the mouth of the creek on the Lake Erie shoreline in 1796 and

referred to the creek as “Conneaught Creek,” an anglicized spelling of the Seneca name for the creek. The creek also gives its name to the city of Conneaut, Ohio, which is within the proposed AVA. The petition includes several examples of businesses and organizations within the proposed AVA that use the name “Conneaut” or “Conneaut Creek,” including Conneaut Creek Veterinary Wellness and Urgent Care, Conneaut Creek Float and Fly Shop, the Conneaut Creek Club, Conneaut Creek Ship Repair, Friends of Conneaut Creek, and Conneaut Creek Fishing Lodge.

Boundary Evidence

The proposed Conneaut Creek AVA encompasses the portion of Conneaut Creek that is in Ohio. Although the creek originates in Pennsylvania, the petition states that the Ohio–Pennsylvania border is used as the eastern boundary of the proposed AVA because at the time the petition was submitted, commercial viticulture did not exist along Conneaut Creek in Pennsylvania. The boundary of the proposed AVA begins at the point where Conneaut Creek intersects the Ohio–Pennsylvania State line. The proposed AVA then encompasses all land within 2 miles of the creek within the State of Ohio, to the point where the creek empties into Lake Erie. The petition states that a 2-mile radius around the creek encapsulates the climate, topography, and soil type of the proposed AVA, the primary characteristic being a climate that is strongly influenced by winds blowing inland from Lake Erie. According to the petition, the climatic influence of these winds lessens the farther one travels from both the Lake Erie shoreline and the banks of Conneaut Creek.

Distinguishing Feature

According to the petition, the distinguishing feature of the proposed Conneaut Creek AVA is its climate, which is influenced by air moving inland from

Lake Erie via Conneaut Creek. The headwaters of the creek are in Pennsylvania, and it primarily flows south to north within that State. However, within the proposed AVA, Conneaut Creek flows from east to west for some time, parallel to Lake Erie, before resuming a northward trajectory into the lake. The proposed AVA is also located along a considerable northeasterly curve of the shoreline. The petition states that due to the shape of the shoreline, air flowing into the proposed AVA has travelled across the waters of Lake Erie for a longer distance than at locations along the shoreline that are farther to the west. Therefore, the air has more time to be affected by the temperature of the water it is passing over. The result is that temperatures in the proposed AVA are typically cooler for longer in the spring growing season, when the water temperature is generally cooler than the air temperature; less extreme in the summer; and warmer in the winter, when the water temperature is generally warmer than the air temperature. By comparison, temperatures in locations farther from the lake are typically warmer in the summer and cooler in the winter than the proposed AVA.

To demonstrate how airflow over Lake Erie affects temperatures, the petition included the average growing degree day¹ (GDD) accumulations from 2015 to 2020 from within the proposed Conneaut Creek AVA and from the city of Fremont, Ohio, which is located within the western portion of the Lake Erie AVA and is not as close to the lake as the proposed AVA. The average GDD accumulation for the proposed AVA was 2,996.6, while the average GDD accumulation from Fremont was 3,379. The petition states that the difference of

¹ See Albert J. Winkler et al., *General Viticulture* (Berkeley: University of California Press, 2nd ed.), pages 61–64 (1974). 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.

382.4 GDDs is equivalent to 3.5 to 4 extra weeks of heat accumulation, indicating a warmer climate in Fremont.

According to the petition, the cooler temperatures of the proposed Conneaut Creek AVA affect grape maturation and levels of malic acid, sugar (measured in degrees Brix), and phenols (which affect flavor, smell, and color). The petition provided information about must from pinot noir grapes harvested on the same date in 2019 from a vineyard in the proposed AVA and from two vineyards in the nearby Grand River Valley AVA (27 CFR 9.87), which is located within the Lake Erie AVA to the southwest of the proposed AVA. The information is set out in the following table. The petition notes that within the proposed AVA, the farthest a vineyard can be from Lake Erie is 6.5 miles, with most existing vineyards being within three miles of Lake Erie. In the Grand River Valley AVA, the closest a vineyard could be to the lake is 7.5 miles.

Table 1: Comparison of Proposed AVA and Grand River Valley AVA Pinot Noir Must

Location	Brix	Total Phenolics (mg/L)	Titrateable Acidity (g/L)
Proposed AVA	17	317	10.4
Grand River Valley AVA Site #1	20.8	608	7.4
Grand River Valley AVA Site #2	20	584	8.1

According to the petition, the cooler growing season temperatures of the proposed Conneaut Creek AVA are reflected in the higher levels of acid in the grape must. Malic acid degradation is primarily a function of temperature, both

ambient and in the leaf canopy, with warmer temperatures reducing acid levels. Cooler growing season temperatures also slow the development of sugar and phenolic components in the grapes, resulting in grape must with lower degrees of Brix and fewer total phenolics.

The petition also included similar information for juice from pinot noir grapes harvested on the same day in 2018 from a vineyard within the proposed AVA and from a vineyard in the city of Vermilion, Ohio, which is located west of the proposed AVA along the central portion of the Lake Erie shoreline and is also within the Lake Erie AVA. The information is set out in the following table.

Table 2: Comparison of Proposed AVA and Lake Erie AVA Pinot Noir Juice

Location	GDD on Date of Harvest	Brix	Total Phenolics
Proposed AVA	2,407	16	406
Vermilion, OH	2,703	19.8	669

The data indicates that Brix levels and the number of total phenolics in the juice from grapes grown in the proposed AVA are lower than those in the juice from the Vermilion vineyard grapes. The lower sugar and phenolics levels, along with the lower GDD accumulations, demonstrate that the proposed AVA has cooler temperatures, even though the proposed AVA and the city of Vermilion are both close to the Lake Erie shore. The data also supports the petition's claim that the proposed Conneaut Creek AVA's location on the northeasterly curve of Lake Erie shoreline allows the air passing over the lake during the growing season to cool for a greater length of time than air that reaches the shoreline farther to the west.

The petition states that lower sugar and phenolic levels and higher acid levels can also be found when comparing cabernet franc grapes grown in the

proposed Conneaut Creek AVA to the same varietal grown in the Grand River Valley AVA and the western end of the Lake Erie AVA. The petition notes that cabernet franc grapes typically ripen later than pinot noir, regardless of where they are grown. The following table sets out the information.

Table 3: Comparison of Cabernet Franc Fruit Maturity

Year	Harvest Date	Grape Components	Proposed Conneaut Creek AVA	Grand River Valley AVA	Western Portion of Lake Erie AVA
2018	October 10	Brix	19.6	20.2	21
		Total phenolics (mg/L)	399	544	488
		Titrateable acidity (mg/L)	6	4.6	N/A
2019	October 10	Brix	20.4	22.2	N/A
		Total phenolics (mg/L)	469	531	N/A
		Titrateable acidity (mg/L)	9.6	6	N/A
2020	October 9	Brix	21.8	22	N/A
		Total phenolics (mg/L)	320	380	N/A
		Titrateable acidity (mg/L)	10.1	7.9	N/A

The petition did not include data related to growing season temperatures within the region to the east of the proposed AVA, in Pennsylvania, because the region lacked viticulture at the time the petition was submitted.

Comparison of the Proposed Conneaut Creek AVA to the Existing Lake Erie AVA

The Lake Erie AVA was established by T.D. ATF–156, which was published in the **Federal Register** on October 21, 1983 (48 FR 48819). T.D. ATF–156 states that the AVA is distinguished by its proximity to Lake Erie, which “exerts a moderating influence” on temperatures. Locations adjacent to the lake are more protected from extreme minimum and maximum temperatures than regions farther from the lake. T.D. ATF–156 also states that “[s]oils, elevations, and other physiographic features are diverse and * * * do not directly form the basis” for distinguishing the AVA.

The proposed Conneaut Creek AVA also has the lake-influenced climate that is the primary feature of the Lake Erie AVA. However, due to its location on the northeastern edge of the Lake Erie AVA and its maximum distance of 6.5 miles from the lake, the proposed AVA has a cooler growing season than locations within the Lake Erie AVA that are farther west or farther inland.

TTB Determination

TTB concludes that the petition to establish the approximately 37,116-acre “Conneaut Creek” AVA merits consideration and public comment, as invited in this document.

Boundary Description

See the narrative boundary descriptions of the petitioned-for AVA in the proposed regulatory text published at the end of this document.

Maps

The petitioner provided the required maps, and they are listed below in the proposed regulatory text. You may also view the proposed Conneaut Creek 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.

If TTB establishes this proposed AVA, its name, "Conneaut Creek," 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 proposed regulation clarifies this point. Consequently, wine bottlers using "Conneaut Creek" in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the viticultural area's name "Conneaut Creek." The approval of the proposed Conneaut Creek AVA

would not affect any existing AVA, and any bottlers using “Lake Erie” as an appellation of origin or in a brand name for wines made from grapes grown within the Conneaut Creek AVA would not be affected by the establishment of this new AVA. If approved, the establishment of the proposed Conneaut Creek AVA would allow vintners to use “Conneaut Creek,” “Lake Erie,” or both AVA names as appellations of origin for wines made from grapes grown within the proposed AVA, if the wines meet the eligibility requirements for the appellation.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether TTB should establish the proposed Conneaut Creek AVA. TTB is interested in receiving comments on the sufficiency and accuracy of the name, boundary, and other required information submitted in support of the AVA petition. TTB invites comments on whether the boundary description, which only includes land within the proposed boundary that is also within 2 statute miles of Conneaut Creek within the AVA, is sufficient to identify the proposed AVA and different enough from areas outside that boundary. In addition, because the proposed Conneaut Creek AVA would be within the existing Lake Erie AVA, TTB is interested in comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the existing AVA. TTB is also interested in comments on whether the geographic features of the proposed AVA are so distinguishable from the Lake Erie AVA that the proposed Conneaut Creek AVA should not be part of the established AVA. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Conneaut Creek AVA on wine labels that include the term “Conneaut Creek” as

discussed above under **Impact on Current Wine Labels**, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area names and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the proposed AVA.

Submitting Comments

You may submit comments on this proposal by using one of the following methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this document within Docket No. TTB–2023–0010 on “Regulations.gov,” the Federal e-rulemaking portal, at <https://www.regulations.gov>. A direct link to that docket is available under Notice No. 228 on the TTB Web site at <https://www.ttb.gov/wine/notices-of-proposed-rulemaking>. Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on the “FAQ” link at the bottom of the page.

- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Box 12, Washington, DC 20005.

Please submit your comments by the closing date shown above in this document. Your comments must reference Notice No. 228 and include your name and mailing address. Your comments also must be made in English, be

legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

Your comment must clearly state if you are commenting on your own behalf or on behalf of an organization, business, or other entity. If you are commenting on behalf of an organization, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please enter the entity's name in the "Organization" blank of the online comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this document, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB–2023–0010 on the Federal e-rulemaking portal, Regulations.gov, at <https://www.regulations.gov>. A direct link to that docket is available on the TTB Web site at <https://www.ttb.gov/wine/notices-of-proposed-rulemaking> under Notice No. 228. You may also reach the relevant docket through the Regulations.gov search page at <https://www.regulations.gov>. For instructions on how to use Regulations.gov, visit the site and click on the "FAQ" link at the bottom of the page.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. TTB may omit voluminous attachments or material that it considers unsuitable for posting.

You may also obtain copies of this proposed rule, all related petitions, maps, other supporting materials, and any electronic or mailed comments that TTB receives about this proposal at 20 cents per 8.5- x 11-inch page. Please note that TTB is unable to provide copies of USGS maps or any similarly-sized documents that may be included as part of the AVA petition. Contact TTB's Regulations and Rulings Division by e-mail using the web form at <https://www.ttb.gov/contact-rrd>, or by telephone at 202-453-1039, ext. 175, to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area 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

This proposed rule is not a significant regulatory action as defined by Executive Order 12866, as amended. Therefore, it requires no regulatory assessment.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend 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._____ to read as follows:

§ 9._____ Conneaut Creek.

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

(b) *Approved maps.* The 4 United States Geological Survey (USGS) 1:24,000 scale topographic map used to determine the boundary of the viticultural area are as follows:

- (1) Conneaut, OH–PA, 2019;
- (2) North Kingsville, OH, 2019;
- (3) Gageville, OH, 2019; and
- (4) Pierpoint, OH, 2019.

(c) *Boundary.* The Conneaut Creek viticultural area is located in Ashtabula County, Ohio. The boundary of the Conneaut Creek viticultural area is as described as follows:

(1) The beginning point is on the Conneaut map at the intersection of the Ohio–Pennsylvania State line and Conneaut Creek.

(2) From the beginning point, proceed westerly, then easterly, then northerly along Conneaut Creek, crossing onto the North Kingsville map and

back onto the Conneaut map, to the point where Conneaut Creek flows into Lake Erie.

(3) The Conneaut Creek viticultural area consists of all land within 2 statute miles of Conneaut Creek on the Conneaut, North Kingsville, Gageville, and Pierpoint maps.

Signed: December 19, 2023.

Mary G. Ryan,

Administrator.

Approved: December 20, 2023.

Thomas C. West, Jr.,

Deputy Assistant Secretary (Tax Policy).

[FR Doc. 2024-00059 Filed: 1/4/2024 8:45 am; Publication Date: 1/5/2024]