



DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB-2023-0006; T.D. TTB-194; Re: Notice No. 224]

RIN 1513-AD02

Establishment of the Upper Cumberland 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 2,186,689-acre “Upper Cumberland” American viticultural area (AVA) in Middle Tennessee. The Upper Cumberland viticultural area is not located within, nor does it 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). 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 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;
- 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 Cumberland Petition

TTB received a petition from the Appalachian Region Wine Producers Association proposing the establishment of the “Upper Cumberland” AVA in Middle Tennessee. The proposed Upper Cumberland AVA covers approximately 2,186,689 acres and is not located within any other AVA. There are 55 commercially producing vineyards covering a total of approximately 71 acres within the proposed AVA, as well as nine wineries.

According to the petition, the distinguishing features of the proposed AVA are its geology and elevation, soils, and climate. The proposed Upper Cumberland AVA covers portions of three distinct geographical regions: the western portion of the Cumberland Plateau, the Eastern Highland Ridge, and the eastern portion of the Outer Central Basin. The eastern region of the proposed AVA is located on the western portion of the Cumberland Plateau and was formed from layers of sedimentary rocks that were deposited when an ocean covered the area. The average elevations in the eastern region of the proposed AVA range from 1,500 to 1,800 feet. The middle region of the proposed AVA is located on a cuesta known as the Eastern Highland Rim. This region of the proposed AVA is comprised mainly of various limestones, chert, and shale and contains elevations ranging from 600 to 1,000 feet. The western region of the proposed Upper Cumberland AVA is mostly an escarpment located on the Outer Central Basin of Middle Tennessee with underlying rocks of limestone, chert, and shale. The petition did not include a range of elevations for the western region of the proposed AVA but noted that the elevations are higher than the average elevations of the Inner Central Basin region located farther to the west.

The petition notes that the uplifted elevations of the proposed AVA allow more direct and concentrated sunlight—particularly UV light—into the vineyards than in vineyards at lower elevations. According to the petition, for every 1,000 feet of elevation, the level of UV light increases between 10 and 20 percent. As a result of greater levels of UV rays, grapes develop thicker skins which increases the color concentration and tannins in the resulting wines.

According to the petition, regions to the north and south of the proposed AVA contain the same geological features found within the proposed AVA, but the petition did not provide information on elevations within these regions. The

region east of the proposed AVA is the Valley and Ridge Province of Tennessee, where the sediment and rock was folded and faulted rather than being uplifted into a plateau. Elevations range from 1,100 to 1,500 feet in the ridges and from 700 to 1,000 feet in the valleys. To the west of the proposed AVA is the Inner Central Basin where elevations are 300 to 400 feet lower than elevations within the adjacent portion of the proposed AVA.

The petition states that there are three types of soil orders in the proposed AVA. It defines Ultisols soils as “strongly leached, acid forest soils with relatively low fertility.” Inceptisols soils “exhibit minimal horizon development” and “lack features characteristic of other soil orders.” Alfisols soils are moderately-leached soils with relatively high native fertility. The petition notes the eastern portion of the proposed AVA contains Ultisols and Inceptisols soils that are moderately deep, dominantly well-drained, and strongly acidic. These soils have an udic soil moisture regime, meaning that water moves down through the soil at some time in most years, and the amount of soil moisture plus rainfall is approximately equal to or exceeds the amount of evapotranspiration.

The middle portion of the proposed AVA contains Ultisols, Inceptisols, and Alfisols soils that are moderately-to-very deep, moderately well-drained, and loamy or clayey. These soils are in the udic soil moisture regime and are also predominantly in the thermic soil temperature regime, meaning that soil temperatures at a depth of 20 inches range from 59 to 72 degrees Fahrenheit.

The western portion of the proposed AVA contains Ultisols, Inceptisols, and Alfisols soil orders. Soils in this portion have a thermic soil temperature regime and udic soil moisture regime, similar to the soils in the middle portion of the proposed AVA. The petition notes that the acidic and well-drained soils of

the proposed Upper Cumberland AVA allow grapes to retain acidity as they ripen, resulting in “brighter, more acidic finished wines.”

According to the petition, to the north and south of the proposed AVA, the soils are similar to the soils within the proposed AVA. Soils east of the proposed AVA are almost exclusively Ultisols soils that generally have a thermic soil temperature regime and an udic soil moisture regime. Soils west of the proposed AVA include Mollisols soils, which are found in grassland ecosystems and are not found in the proposed AVA. Additionally, the region west of the proposed AVA does not contain as many Ultisols soils as the proposed AVA.

The petition provided climate data, specifically annual minimum and maximum temperatures, growing season mean temperatures, growing season length, growing degree days¹ (GDDs), USDA plant hardiness zones, and annual precipitation amounts for the proposed Upper Cumberland AVA and the surrounding regions. According to the petition, the proposed AVA has a climate that is suitable for growing a wide variety of wine grapes, including *vinifera*, hybrid, native, and muscadine varieties currently growing within the proposed AVA. The proposed AVA has an average growing season length of 212 days, a mean growing degree temperature of 67.5 degrees Fahrenheit, and an average annual precipitation amount of 50.02 inches.

The area south of the proposed AVA has a generally warmer climate, longer growing season, and higher annual precipitation amount than the proposed AVA. In the area east of the proposed AVA, the mean growing season

¹ See Albert J. Winkler, *General Viticulture* (Berkeley: University of California Press, 1974), pages 61–64. In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual Growing Degree Days (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. The Winkler scale regions are as follows: Region Ia: 1,500–2,000 GDDs; Region Ib: 2,000– 2,500 GDDs; Region II: 2,500–3,000 GDDs; Region III: 3,000–3,500 GDDs; Region IV: 3,500–4,000 GDDs; Region V: 4,000–4,900 GDDs.

temperature is similar to the proposed AVA, but the growing season is slightly shorter, and the annual precipitation amount is slightly higher. The area west of the proposed AVA has a shorter mean growing season temperature and a higher mean annual precipitation amount than the proposed AVA.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 224 in the **Federal Register** on August 29, 2023 (88 FR 59482), proposing to establish the Upper Cumberland 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 included information from the petition comparing 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. 224. In Notice No. 224, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. The comment period for Notice No. 224 closed on October 30, 2023.

In response to Notice No. 224, TTB received four comments. The commenters were Mountain Valley Vineyards, Inc, the Tennessee Wine and Grape Board, the Tennessee Farm Winegrowers Alliance, and the Upper Cumberland Tourism Association. All the comments supported the establishment of the proposed Upper Cumberland AVA, suggesting, for example, that the AVA designation would support the growth of the wine and grape industries and make the area appealing for tourism, new businesses and jobs, and new residents. The comments did not raise any new issues concerning the

proposed AVA. TTB did not receive any comments opposing the establishment of the Upper Cumberland AVA.

TTB Determination

After careful review of the petition and the comments received in response to Notice No. 224, TTB finds that the evidence provided by the petitioner supports the establishment of the Upper Cumberland 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 “Upper Cumberland” AVA in Middle Tennessee, effective 30 days from the publication date of this document.

Boundary Description

See the narrative description of the boundary of the Upper Cumberland 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 Upper Cumberland 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 Upper Cumberland AVA, its name, “Upper Cumberland,” 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 “Upper Cumberland” 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 Cumberland AVA will not affect any existing AVA. The establishment of the Upper Cumberland AVA will allow vintners to use “Upper Cumberland” as an appellation of origin for wines made primarily from grapes grown within the Upper Cumberland 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, as amended. 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 § 9.294 to read as follows:

§ 9.294 Upper Cumberland.

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

(b) *Approved maps.* The 8 United States Geological Survey (USGS) 1:100,000 scale topographic maps used to determine the boundary of the Upper Cumberland viticultural area are:

- (1) Bowling Green, 1985;
- (2) Tompkinsville, 1985; photoinspected 1992;

- (3) Corbin, 1981;
- (4) Nashville, 1984;
- (5) Cookeville, 1982;
- (6) Oak Ridge, 1979;
- (7) McMinnville, 1981; and
- (8) Watts Bar Lake, 1981.

(c) *Boundary*. The Upper Cumberland viticultural area is located in Cumberland, Fentress, Macon, Overton, Putnam, Smith, Warren, and White Counties, in Tennessee. The boundary of the viticultural area is described as follows:

(1) The beginning point is on the Bowling Green map at the intersection of the shared Macon–Sumner County line and the shared Kentucky–Tennessee State line. From the beginning point, proceed south along the shared Macon–Sumner County line, crossing onto the Nashville map and continuing along the shared Macon–Sumner County line to its intersection with the Trousdale County line; then

(2) Proceed east, then southeast, then east along the shared Trousdale–Macon County line, crossing onto the Cookeville map and continuing east along the shared Trousdale–Macon County line to its intersection with the Smith County line; then

(3) Proceed southwesterly along the shared Smith–Trousdale County line, crossing back onto the Nashville map and continuing southwesterly, then westerly along the shared Smith–Trousdale County line to its intersection with the Wilson County line; then

(4) Proceed southeasterly along the shared Wilson–Smith County line to its intersection with the DeKalb County line; then

(5) Proceed east along the shared Smith–DeKalb County line, crossing onto the Cookeville map and continuing east along the Smith–DeKalb County line to its intersection with the Putnam County line; then

(6) Proceed southeast along the shared DeKalb–Putnam County line to its intersection with the White County line; then

(7) Proceed southeast along the shared Dekalb–White County line, crossing onto the McMinnville map and continuing south along the DeKalb–White County line to its intersection with the Warren County line; then

(8) Proceed west along the shared DeKalb–Warren County line to its intersection with the Cannon County line; then

(9) Proceed southwesterly along the shared Warren–Cannon County line to its intersection with the Coffee County line; then

(10) Proceed southeast along the shared Warren–Coffee County line to its intersection with the Grundy County line; then

(11) Proceed east along the shared Warren–Grundy County line to its intersection with the Sequatchie County line; then

(12) Proceed east along the shared Warren–Sequatchie County line to its intersection with the Van Buren County line; then

(13) Proceed northwest, then north along the shared Warren–Van Buren County line to its intersection with the White County line; then

(14) Proceed east, then southerly along the shared White–Van Buren County line to its intersection with the shared Cumberland–Bledsoe County line; then

(15) Proceed east along the shared Bledsoe–Cumberland County line to its intersection with U.S. Highway 127/State Road 29; then

(16) Proceed northeast in a straight line for a total of 21.81 miles, crossing over the Watts Bar Lake map and onto the Oak Ridge map to the intersection of the straight line with the shared Cumberland–Morgan County line east of Hebbertsburg; then

(17) Proceed northwesterly, then westerly, then northwesterly along the shared Cumberland–Morgan County line to its intersection with the Fentress County line; then

(18) Proceed north, then northeast along the shared Fentress–Morgan County line to its intersection with the Scott County line; then

(19) Proceed northeast, then northwest along the shared Scott–Fentress County line, crossing onto the Corbin map and continuing along the shared Scott–Fentress County line to its intersection with the Pickett County line; then

(20) Proceed west, then northwesterly along the shared Fentress–Pickett County line, crossing over the Tompkinsville map and onto the Cookeville map and continuing along the shared Fentress–Pickett County line to its intersection with the Overton County line; then

(21) Proceed west, then northwesterly along the shared Pickett–Overton County line, crossing onto the Tompkinsville map and continuing along the shared Pickett–Overton County line to its intersection with the Clay County line; then

(22) Proceed southwesterly along the shared Overton–Clay County line, crossing onto the Cookeville map and continuing south along the shared Overton–Clay County line to its intersection with the Jackson County line; then

(23) Proceed southerly along the shared Overton–Jackson County line to its intersection with the Putnam County line; then

(24) Proceed westerly along the shared Putnam–Jackson County line to its intersection with the Smith County line; then

(25) Proceed westerly, then northerly along the shared Smith–Jackson County line to its intersection with the Macon County line; then

(26) Proceed north along the shared Macon–Jackson County line, crossing onto the Tompkinsville map and continuing along the shared Macon–Jackson County line to its intersection with the Clay County line; then

(27) Proceed north along the shared Macon–Clay County line to its intersection with the shared Tennessee–Kentucky State line; then

(28) Proceed west along the Tennessee–Kentucky State line, crossing onto the Bowling Green map and returning to the beginning point.

Signed: May 9, 2024.

Mary G. Ryan,
Administrator.

Approved: May 10, 2024.

Aviva R. Aron-Dine,
Acting Assistant Secretary (Tax Policy).

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