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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2008–0007; T.D. TTB–77; Re: Notice No. 88]

RIN 1513–AB40

Establishment of the Upper Mississippi River Valley Viticultural Area (2007R–055P)

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

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the 29,914-square mile “Upper Mississippi River Valley” viticultural area in portions of southeast Minnesota, southwest Wisconsin, northwest Illinois, and northeast Iowa. We designate 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: *Effective Date:* July 22, 2009.

FOR FURTHER INFORMATION CONTACT: Karen Welch, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; phone 202–927–0713.

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 requires that these regulations, 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 regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and 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) contains the list of approved viticultural areas.

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 distinguishable by geographical features, the boundaries of which have been recognized and defined 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 its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area 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 outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural

area, based on features found on United States Geological Survey (USGS) maps; and

- A copy of the appropriate USGS map(s) with the proposed viticultural area’s boundary prominently marked.

Upper Mississippi River Valley Petition

The Upper Mississippi River Valley AVA Committee submitted a petition to TTB proposing the establishment of the 29,914-square mile Upper Mississippi River Valley American viticultural area in portions of southeast Minnesota, southwest Wisconsin, northwest Illinois, and northeast Iowa. A map submitted with the petition indicates that the vineyards within the proposed viticultural area are geographically dispersed throughout the area. The established 28,000-acre (43.75-square mile) Lake Wisconsin viticultural area (27 CFR 9.146) located in Columbia and Dane Counties, Wisconsin, lies entirely within the eastern portion of the proposed viticultural area.

As indicated on the USGS maps included with the petition, the Mississippi River runs north-to-south in the approximate middle of the proposed viticultural area. St. Paul, Minnesota, is the northernmost point of the proposed viticultural area and its southernmost point is north of Moline, Illinois. According to the petitioner, the Wisconsin ice age and the effects of glaciation on the region provide a basis for most of the distinguishing features of the proposed viticultural area.

We summarize below the supporting evidence submitted with the petition.

Name Evidence

According to the petitioner, the Upper Mississippi River Wildlife and Fish Refuge Act of 1924 provides a historical perspective in support of the “Upper Mississippi River Valley” name and its boundaries. The Act established what later would be known as the Upper Mississippi River National Wildlife and Fish Refuge, an area that Congress created to reflect the unique habitat of the Paleozoic Plateau (see “Regional Land Management” below). The petition documentation includes references citing the Upper Mississippi River Valley name relevant to the Upper Mississippi River National Wildlife and Fish Refuge. The petitioner documented the use of the Upper Mississippi River Valley name in Federal and public Web sources.

A page on the USGS Web site, "Status and Trends of the Nation's Biological Resources, Part 2, Regional Trends of Biological Resources," (<http://biology.usgs.gov/s+t/SNT/index.htm>) includes a section on the Mississippi River. The "Geography, Geological History, and Human Development" subsection explains the glacial history of the Upper Mississippi River. The Wisconsin Glacier retreating into Canada and melting is described as follows: "The Upper Mississippi River valley then began filling with glacial outwash, mainly sand and gravel, a process that is still under way * * *." The Upper Mississippi River valley widens considerably where it joins the Minnesota River, 13 kilometers downstream from St. Anthony Falls * * *." The petitioner explained that at St. Anthony Falls the Mississippi River headwaters join the northern boundary of the Upper Mississippi River Valley.

Regarding the history of the valley, a page on the National Park Service Web site (<http://www.nps.gov/efmo/parks/hist.htm>) states that "The Upper Mississippi River valley was not only the home of prehistoric Indians for thousands of years, but also has been the scene for over 300 years of recorded human history as well. Early explorers found the area along the big river occupied by groups of Native Americans."

The May 6, 1997, NOVA broadcast entitled "Flood!" described the 1993 flooding of the Upper Mississippi River Valley. It included an interview with

Lynn House of Quincy, Illinois. She and her husband own 1,400 acres along the Mississippi River. Mrs. House said that during the flooding of 1993 her husband exclaimed, "Levees are going to break like guitar strings, up and down the Upper Mississippi River Valley!"

"Twelve Millennia: Archaeology of the Upper Mississippi River Valley," by James Theler and Robert Boszhardt (2003, Iowa State University Press), provides an overview of the 12,000-year-old human past of the Driftless Area of the Upper Mississippi River Valley, according to a description of the book on <http://www.amazon.com>. The Driftless Area extends from Rock Island Rapids, in the Moline-Rock Island, Illinois, area, north to St. Anthony Falls in the Minneapolis-St. Paul, Minnesota, area. (It comprises areas that were excluded from glacial transport of sediments and other materials.) The petitioner noted that the Driftless Area roughly corresponds to the boundary of the proposed Upper Mississippi River Valley viticultural area.

The "Upper Mississippi River Valley: A Personal Web Site and Guide," at <http://soli.inav.net/~atkinson/k/UpperMissRiver.htm>, has scenic photographs and information on local tourism, parks and natural areas, cities and towns, books, and shopping in the Upper Mississippi River Valley.

Boundary Evidence

The proposed Upper Mississippi River Valley viticultural area covers 29,914 square miles, averaging 120

miles east to west and 225 miles north to south, according to the USGS maps provided with the petition. The headwaters of the Mississippi River start at Lake Itasca in northwest Minnesota and continue to St. Anthony Falls in Minneapolis-St. Paul, Minnesota, the petitioner explained.

According to the USGS maps included with the petition, the proposed northern boundary of the Upper Mississippi River Valley viticultural area coincides with the landmark St. Anthony Falls. The proposed southern portion of the boundary extends west from north of Moline, Illinois, at Lock and Dam 14 on the Mississippi River, to Tiffin, Iowa. The USGS maps show that the proposed easternmost point of the proposed boundary is in Janesville, Wisconsin, and the westernmost point is along Minnesota State Highway 56 in Coates, Minnesota, south of St. Paul.

To define the proposed boundary of the Upper Mississippi River Valley viticultural area, the petitioner provided a written boundary description and USGS State maps for Minnesota, Wisconsin, Illinois, and Iowa. The petitioner also provided Anamosa and Marshalltown, Iowa, regional maps, which show highways in more detail.

States and Counties

The table below lists the counties in four States that are either totally or partially within the boundary of the proposed Upper Mississippi River Valley viticultural area.

COUNTIES IN THE PROPOSED UPPER MISSISSIPPI RIVER VALLEY VITICULTURAL AREA

Minnesota	Wisconsin	Illinois	Iowa
1. Dakota	Buffalo	Carroll	Allamakee
2. Dodge	Clark	Jo Davies	Black Hawk
3. Fillmore	Columbia	Lee	Bremer
4. Goodhue	Crawford	Ogle	Buchanan
5. Houston	Dane	Rock Island	Cedar
6. Mower	Dunn	Stephenson	Chickasaw
7. Olmstead	Eau Claire	Whiteside	Clayton
8. Wabasha	Grant	Winnebago	Clinton
9. Washington	Green		Delaware
10. Winona	Iowa		Dubuque
11.	Jackson		Fayette
12.	Juneau		Howard
13.	La Crosse		Jackson
14.	La Fayette		Johnson
15.	Monroe		Jones
16.	Pepin		Linn
17.	Pierce		Scott
18.	Richland		Winneshiek
19.	Rock.		
20.	Sauk.		
21.	St. Croix.		
22.	Trempealeau.		
23.	Vernon.		

Regional History

The petitioner explained that European explorers Jacques Marquette and Louis Joliet first entered the Upper Mississippi River Valley on June 17, 1673. The Louisiana Purchase and the resolution of the Black Hawk War in 1832 served to open the area to settlers from the eastern States.

According to the petitioner, native grape varieties in the Upper Mississippi River Valley thrived in the late 19th and early 20th centuries. In 1919, Iowa produced the sixth largest grape crop in the United States. However, prohibition, severe freezes, droughts, and wind drift from some crop sprays caused native viticulture to dwindle throughout much of the 20th century within the proposed viticultural area. The disease- and cold-resistant French-American grape hybrids and crop spray improvements developed during the 20th century resulted in renewed confidence in grape growing as an industry in the Upper Mississippi River Valley region.

Regional Land Management

The petitioner explained that two management areas, Major Land Resource Area (MLRA) 105 and the Driftless Area Initiative (DAI), help to define the proposed viticultural area. The United States Department of Agriculture, Natural Resources Conservation Service (NRCS), oversees the management of MLRAs. MLRA 105 comprises the Paleozoic Plateau, which more recent glacial incursions surrounded, bypassed, and preserved as a rugged, bedrock-controlled environment with soils lacking the glacial drift of areas outside the MLRA boundary. Thus, it encompasses a vast area that has similar soils, climate, water resources, and land uses. It includes portions of four States: Southeastern Minnesota, southwestern Wisconsin, northeastern Iowa, and northwestern Illinois. It roughly corresponds to the boundary of, but is 4 percent smaller than, the proposed viticultural area.

The DAI, according to the petitioner, comprises the Midwest Driftless Area with its atypical lack of glacial till. It was created and is managed jointly by the Resource Conservation and Development Councils under the NRCS in the four-State area. The DAI is mandated to conserve land, water, and habitat resources that are strongly influenced by the dramatic landscape. In some areas the DAI boundary slightly extends beyond the MLRA 105 boundary to more fully capture included watersheds and transitional areas of increasing glacial drift.

The petitioner used State and interstate highways to define the boundary of the proposed Upper Mississippi River Valley viticultural area. The highways are marked on the USGS maps and form a boundary that comprises these important, interrelated components of the proposed viticultural area: The Upper Mississippi River National Wildlife and Fish Refuge, the Paleozoic Plateau, MLRA 105, the Driftless Area, and the Upper Mississippi River watershed.

According to the petitioner, the proposed Upper Mississippi River Valley viticultural area includes steep-sided cliffs, bluffs, deeply entrenched stream valleys, and karst features. It has more hills, ridges, areas of thinner glacial till, and thus better drainage for grapes than areas outside the proposed boundary. Outside the proposed boundary, the topography consists of smoother landforms of unconsolidated materials, glacial drift that is thicker than that within the proposed boundary, and alluvium.

The petitioner explained that how the Mississippi River is divided varies among individuals, commercial entities, and public agencies. The petitioner noted that “* * * the Mississippi River, sometimes in conjunction with its valley, is discussed as having upper and lower segments.” Others, however, refer to the upper, middle, and lower Mississippi.

The petitioner explained further that the southern boundary line of the proposed Upper Mississippi River Valley viticultural area correlates with the southern border of the Upper Mississippi Fish and Wildlife Refuge established in 1924. The Wapsipinicon River watershed closely parallels the eastern and southern boundary lines of the proposed viticultural area. Interstate Highway 80, which serves as a portion of the southern boundary line of the proposed viticultural area, approximates the Wapsipinicon River watershed boundary line.

The petitioner explained that the southern boundary of the proposed viticultural area correlates with the southern boundary of the U.S. Department of Agriculture Hardiness Zone 4b. Also, based on research information provided by Professor Paul Domoto, PhD, Department of Horticulture, Iowa State University, the average minimum winter temperatures within the proposed Upper Mississippi River Valley viticultural area are –15 to –20 degrees F. To the south, they are –10 to –15 degrees F.

According to the petitioner, the southern portion of the boundary of the proposed viticultural area continues for

a few miles south of the established southern portion of the boundary of MLRA 105. Also, the western portion of the boundary of the proposed viticultural area includes a portion of the adjacent MLRA 104 to encompass the entire watershed of the Wapsipinicon River, a primary tributary of the Upper Mississippi River.

Lake Wisconsin AVA (27 CFR 9.146)

The proposed Upper Mississippi River Valley viticultural area includes the established 28,000-acre Lake Wisconsin viticultural area, which the petitioner explained. The Wisconsin River, which forms Lake Wisconsin, is a major tributary of the Upper Mississippi River.

The petitioner stated that the Lake Wisconsin viticultural area is comprised of soil orders and Driftless Area topography similar to those of the proposed Upper Mississippi River Valley viticultural area. Regarding the Lake Wisconsin viticultural area, which has a few glacial deposits at the higher elevations, according to the petitioner, geologists view that area as a transitional glacial area. (The original Lake Wisconsin viticultural area (T.D. ATF–352, 59 FR 537, January 5, 1994) describes the area as a transitional zone between the glaciated topography to its east and the unglaciated, driftless topography to its west.)

Distinguishing Features

The petitioner asserted that the distinguishing features of the proposed Upper Mississippi River Valley viticultural area include its geology, unglaciated topography, climate, soils, and hydrology. The Wisconsin ice age affected the region and provided a basis for most of the distinguishing features of the proposed viticultural area, specifically topography, soils, and hydrology.

Geology

The petitioner explained that a significant event in the geologic history of the proposed Upper Mississippi River Valley viticultural area was the impact of the massive Wisconsin Glacier during the Wisconsin ice age. The glacier, which had lobes in Minnesota and Iowa, started melting 15,000 years ago and retreated northward toward Canada. The resulting glacial water flows combined with the Glacial St. Croix River and drained Glacial Lake Duluth, known now as Lake Superior. The relatively sediment-free drainage of Glacial Lake Duluth helped carve the Upper Mississippi River Valley channel to a depth of about 250 meters, or 820 feet. Eventually, alluvial deposits started

refilling the river channel, beginning a process that has continued into modern times.

According to the petitioner, the development of the Upper Mississippi River impacted the regional topography and landforms. The tributary valleys include terraces, older flood plain deposits, and entrenched and hanging meanders (streams). These features show the complexity of the alluvial history and river development associated with glacial melting and drainage diversions.

The petitioner stated that surface materials, especially along the Paleozoic Plateau, date to 100,000 years in age. The younger materials that are outside the proposed boundary and that are largely the result of glacial erosion and glacial till date to 10,000 years in age, or 90,000 years younger than the surface materials on the Paleozoic Plateau.

The petitioner explained that streams in the proposed Upper Mississippi River Valley viticultural area cut deep dissections through the inclined landforms and exposed Paleozoic rock. The exposed rock, which varies in age from 350 to 600 million years old, is predominantly dolomite, limestone, and sandstone.

Topography

The Driftless Area of the Upper Mississippi River Valley has a unique topography and subsurface structure because a direct glacial incursion did not occur in that area during the most recent Wisconsin ice age, the petitioner explained. Consequently, the topography does not have substantial

amounts of materials deposited by glaciers. The petitioner noted that the proposed boundary divides the rugged, dissected, bedrock-controlled landscapes within the Upper Mississippi River Valley from the gently rolling landscapes that have lower relief and glaciated, erosional surfaces and that are outside the valley.

Bedrock control in the proposed area, the petitioner explained, refers to the entrenched valleys and karst that constitute an integrated drainage network. The karst topography of the proposed viticultural area includes underground caves, sinkholes, springs, and subsurface caverns. According to the petitioner, rivers and underground water flows are general features throughout the proposed Upper Mississippi River Valley viticultural area, which has none of the natural lakes that direct glacial movement normally creates. Outside the boundary of the proposed Upper Mississippi River Valley viticultural area, the petitioner continued, the topography consists of unconsolidated, heavily dissected soil material along substantial deposits of glacial materials on smooth, rolling hills.

The elevations of the Upper Mississippi River Valley viticultural area, the petitioner stated, range from 660 feet on valley floors to 1,310 feet on high ridges. Outside the boundary of the proposed viticultural area, elevations average 250 feet higher to the northwest and 165 feet lower to the southeast.

The petitioner explained that north of the boundary of the proposed Upper Mississippi River Valley viticultural

area loess covers the level-to-rolling till plains. Elevations change little on the plains.

East of the boundary of the proposed Upper Mississippi River Valley viticultural area, the landscape is dominated by a glaciated plain that has belts of morainic hills, ridges, and washout terraces. (TTB notes that morainic hills are accumulations of soil and stones that glacial activity has left.) Also, elevations generally vary several feet, except for the 80- to 330-foot-high moraines, drumlins, and bedrock escarpments.

South of the boundary of the proposed Upper Mississippi River Valley viticultural area are rolling, hilly, loess-covered plains and some broad, level uplands in the southwest region. Elevations there also generally vary by only several feet, except on the upland flats, where elevation changes up to 200 feet.

West of the boundary of the proposed Upper Mississippi River Valley viticultural area the landscape is a nearly level to gently sloping till plain. Elevations generally vary by several feet.

Soils

The soils common to the proposed Upper Mississippi River Valley viticultural area, the petitioner stated, are stony or rocky soils on steep slopes. The petitioner provided comparative soil data for the proposed viticultural area and the surrounding regions. The data, which show differences and similarities of the soils, are listed in the table below.

DIFFERENCES AND SIMILARITIES OF THE SOILS WITHIN AND OUTSIDE OF THE UPPER MISSISSIPPI RIVER VALLEY

Location *	Dominant soil orders	Temperature and moisture regimes	Mineralogy, soil depth, drainage, and texture
Within	Alfisols, Entisols, and Mollisols.	Mesic, Udic	Mixed mineralogy, moderately deep to very deep; well drained or moderately well drained; loamy with little clay.
North Outside	Entisols, Alfisols, Histosols, Spodosols, and Inceptisols.	Frigid, Udic	Mixed mineralogy; ≤moderately deep to very deep; well drained to poorly drained; sandy to loamy.
East Outside	Alfisols, Histosols, and Mollisols.	Mesic, Udic	Mixed mineralogy; very deep; well drained to poorly drained; silty, loamy, or clayey.
South Outside	Mollisols, Alfisols, Entisols, and Inceptisols.	Mesic, Udic	Mixed mineralogy; very deep; well drained to poorly drained; loamy.
West Outside	Mollisols and Alfisols	Mesic, Udic	Mixed mineralogy; very deep; well drained to very poorly drained; loamy.

* In relation to the proposed Upper Mississippi River Valley viticultural area.

The petitioner explained that within the boundary of the proposed Upper Mississippi River Valley viticultural area, Argiudolls (Tama, Dodgeville, Richwood, and Dakota series) and Hapludolls (Muscatine series) are on nearly level to gently sloping benches

and broad ridge tops. Hapludolls (Frontenac, Broadale, and Bellechester series) are on steep slopes bordering major valleys. Well drained Udifluvents (Dorchester, Chaseburg, and Arenzville series) are along stream bottoms. Quartzipsamments (Boone series) are on

steep slopes. Also, Udipsamments (Plainfield and Gotham series) are on nearly level stream benches.

Overall, the soils on steep hills and ridges and those formed in comparatively thinner glacial till within the proposed viticultural area have good

natural drainage for grapes. Although they have much clay, generally they have access to water and in numerous areas are on south-facing slopes, creating microclimates beneficial to grapes. The soils outside the proposed boundary generally formed in deeply dissected, thicker glacial drift and alluvium over unconsolidated materials on smooth, gently rolling landscapes. After precipitation they require tile

drainage because of glacial pools and the generally lower relief.

Climate

The petitioner stated that steep slopes, bluffs, numerous rock outcrops, waterfalls and rapids, sinkholes, springs, and entrenched stream valleys combine to create multiple microclimates within the proposed Upper Mississippi River Valley viticultural area. Also, the combination

of microclimates and diverse settings supports varied flora and fauna communities not found outside the boundary of the proposed viticultural area.

The petitioner provided temperature and precipitation data for the proposed Upper Mississippi River Valley viticultural area and its surrounding regions. Those climatic differences are presented in the table below.

TEMPERATURE AND PRECIPITATION FOR WITHIN AND OUTSIDE OF THE UPPER MISSISSIPPI RIVER VALLEY

Location *	Annual average temperature range (degrees fahrenheit)	Annual average frost-free period (days)	Annual average precipitation (inches)	Amount of annual average precipitation received during the growing season
Within	42–50	145–205	30–38	2/3 or more.
North Outside	40–46	135–180	27–33	Most.
East Outside	43–48	150–190	30–38	Most.
South Outside	46–51	170–205	33–38	Most.
West Outside	44–50	160–195	29–37	More than 2/3.

* In relation to the proposed Upper Mississippi River Valley viticultural area.

According to petition data, the proposed Upper Mississippi River Valley viticultural area has, on average, a warmer annual temperature range than that of the surrounding locations to the north and east. In the areas to the south and west, the annual average temperature range is several degrees higher than that in the proposed viticultural area.

The annual average frost-free period within the proposed Upper Mississippi River Valley viticultural area is longer than that in the area to the north and shorter than that in the area to the south, according to petition data. The range of the annual frost-free period in

the proposed viticultural area is greater than in the neighboring areas to the east and west.

The petition data show the precipitation range of the proposed Upper Mississippi River Valley viticultural area as compared to that in the surrounding areas. The annual average precipitation range is higher in the proposed Upper Mississippi River Valley viticultural area than in the area to its north. The areas to the south, west, and east receive approximately the same annual average precipitation, in the same pattern, as the proposed viticultural area. The precipitation during the growing season is greater in

the areas to the north, south, and east than in the proposed viticultural area, and approximately the same in the area to the west of the proposed viticultural area.

Hydrology

The petitioner provided hydrological data that show the growing conditions, including the relationship between the soils and the hydrological characteristics of the proposed Upper Mississippi River Valley viticultural area and its surrounding regions. The hydrological data are presented in the table below.

HYDROLOGICAL DATA AND DRAINAGE NEEDED FOR CROP PRODUCTION WITHIN AND OUTSIDE THE UPPER MISSISSIPPI RIVER VALLEY

Location*	Ground water	Other resources	Soils and crop production
Within	Abundant in valleys and variable on uplands.	Use of springs, streams, and farm ponds, and extensive use of bedrock aquifers.	Minimal need for a tile drainage system in soils.
Outside North	Abundant in deep glacial drift deposits, but scarce in thin ones.	Lakes and streams	Artificial drainage required for soils on lowlands.
Outside East	Abundant in areas underlain by drift.	Inland lakes, streams, and sandstone and limestone bedrock formations below the glacial drift.	Artificial drainage required for fine-textured soils with poor drainage.
Outside South	Abundant in areas of glacial drift	Perennial streams and the Mississippi River.	Favorable precipitation pattern; drainage not required.
Outside West	Adequate	Extensive use of bedrock aquifers	Artificial drainage required for the seasonal high water table.

* In relation to the proposed Upper Mississippi River Valley viticultural area.

In most years the moderate precipitation of the proposed Upper Mississippi River Valley viticultural area, the petitioner explained, is usually

adequate for both the human population and agriculture. Ground water, the petitioner stated, remains abundant in outwash deposits of valleys, but on

uplands it varies in quantity. Bedrock aquifers also provide extensive ground water resources within the proposed

viticultural area and in the area to its west.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 88 regarding the proposed Upper Mississippi River Valley viticultural area in the **Federal Register** (73 FR 46842) on August 12, 2008. In that notice, TTB invited comments by October 14, 2008, from all interested persons. We specifically solicited comments on the sufficiency and accuracy of the name, climatic, boundary, and other required information submitted in support of the petition, as well as if the name and distinguishing geographical feature evidence is sufficient to warrant this new viticultural area that entirely encompasses the existing Lake Wisconsin viticultural area. We received one comment in response to Notice No. 88, and that comment supported the establishment of the Upper Mississippi River Valley viticultural area.

TTB Finding

After careful review of the petition and the comment received, TTB finds that the evidence submitted supports the establishment of the proposed viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the 29,914-square mile "Upper Mississippi River Valley" viticultural area in portions of southeast Minnesota, southwest Wisconsin, northwest Illinois, and northeast Iowa, effective 30 days from the publication date of this document.

As stated above, the proposed Upper Mississippi River Valley AVA contains multiple microclimates, and none of the natural lakes that direct glacial movement normally creates. The Lake Wisconsin viticultural area, established in 1994, contains some geographical features similar to those of the proposed AVA, such as annual average frost-free period, elevation, and a mean precipitation of 29 inches, just 1 inch less than that of the proposed Upper Mississippi River Valley AVA. At the same time, the Lake Wisconsin AVA is recognized as benefitting from the microclimate effects of the lower Wisconsin River Valley. The river moderates winter temperatures and air circulation within the river valley and helps prevent cold air accumulation and frost pockets from forming in the vineyards. In the summer, the river valley and limestone bluffs along the river's edge serve to channel air currents and increase air circulation, thus protecting the vineyards from mildew

and rot in hot, humid weather. Additionally, the Lake Wisconsin AVA is recognized as a transitional zone from unglaciated to glaciated topography, and the soils within the Lake Wisconsin AVA contain some glacial till. Accordingly, although the Lake Wisconsin viticultural area shares some of the characteristics of the proposed AVA, TTB believes that the differences justify the continued recognition of Lake Wisconsin as a distinct viticultural area within the proposed Upper Mississippi River Valley viticultural area.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this document.

Maps

The maps for determining the boundary of the viticultural area are listed below in the regulatory text.

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. With the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, its name, "Upper Mississippi River Valley," is recognized under 27 CFR 4.39(i)(3) as a name of viticultural significance. The text of the new regulation clarifies this point.

Once this final rule becomes effective, wine bottlers using "Upper Mississippi River Valley" 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 viticultural area's full name as an appellation of origin.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, 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 the viticultural area name or other viticulturally significant term and that name or term 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 viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler

would have to obtain approval of a new label. Accordingly, if a previously approved label uses the name "Upper Mississippi River Valley" for a wine that does not meet the 85 percent standard, the previously approved label will be subject to revocation, upon the effective date of the establishment of the "Upper Mississippi River Valley" viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is 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 rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Karen Welch of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

■ For the reasons discussed in the preamble, we amend 27 CFR, chapter I, part 9, 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 § 9.216 to read as follows:

§ 9.216 Upper Mississippi River Valley.

(a) *Name.* The name of the viticultural area described in this section is "Upper Mississippi River Valley". For purposes of part 4 of this chapter, "Upper Mississippi River Valley" is a term of viticultural significance.

(b) *Approved maps.* The six United States Geological Survey topographic maps used to determine the boundary of the Upper Mississippi River Valley viticultural area are titled:

(1) State of Minnesota, scale 1:500,000; compiled in 1963; edition of 1985;

(2) State of Wisconsin, scale 1:500,000; compiled in 1966; edition of 1984;

(3) State of Illinois, scale 1:500,000; compiled in 1970; edition of 1987;

(4) State of Iowa, scale 1:500,000; compiled in 1965; edition of 1984;

(5) Anamosa, Iowa, 1:100,000 scale; edited 1984; and

(6) Marshalltown, Iowa, 1:100,000 scale; edited 1984.

(c) *Boundary.* The Upper Mississippi River Valley viticultural area is located in portions of southeast Minnesota, southwest Wisconsin, northwest Illinois, and northeast Iowa. The boundary of the Upper Mississippi River Valley viticultural area is as described below:

(1) The beginning point is on the State of Minnesota map at the intersection of Interstate Highways 94 and 494 (beltway), east of St. Paul at Oakbury in Washington County. From the beginning point, proceed east on Interstate 94, crossing over Lake St. Croix and onto the State of Wisconsin map at St. Croix County, and then continuing through Dunn County to Eau Claire County, to the intersection of Interstate Highway 94 with Wisconsin State Highway 85, southwest of the City of Eau Claire; then

(2) Proceed northeast on Wisconsin State Highway 85 toward the City of Eau Claire to U.S. Highway 12; then

(3) Proceed southeast on U.S. Highway 12 into Jackson County and passing through Clark County, to Interstate Highway 94 at Black River Falls; then

(4) Proceed southeast on Interstate Highway 94 into Monroe County to Interstate Highway 90, east of the Fort McCoy Military Reservation; then

(5) Proceed southeast on Interstate Highway 90 through Juneau, Sauk, Columbia, Dane, and Rock Counties, crossing onto the State of Illinois map at Winnebago County to U.S. Highway 20 at Cherry Valley; then

(6) Proceed west on U.S. Highway 20 to Illinois State Highway 2, west of the Rock River; then

(7) Proceed southwest on Illinois State Highway 2, passing through Ogle County and into Lee County, to Illinois State Highway 26 at Dixon; then

(8) Proceed south on Illinois State Highway 26 to Illinois State Highway 5 (which has been redesignated as

Interstate Highway 88 on contemporary maps of Illinois); then

(9) Proceed southwest on Illinois State Highway 5 (Interstate Highway 88), passing through Whiteside County and into Rock Island County, to Interstate Highway 80 at Barstow; then

(10) Proceed generally northwest on Interstate Highway 80, crossing the Mississippi River, onto the State of Iowa map at Scott County, and continuing west-northwest through Cedar County and into Johnson County to the intersection of Interstate Highways 80 and 380 at Tiffin; then

(11) Proceed north-northwest on Interstate Highway 380 into Linn County and Cedar Rapids on the State of Iowa map. Then using the Anamosa map, followed by the Marshalltown map, follow Interstate Highway 380, labeled "Under Construction" on the Anamosa map, northwest through Benton and Buchanan Counties to Black Hawk County, to U.S. Highway 20, southeast of Waterloo and Raymond; then

(12) Using the State of Iowa map, proceed west-northwest on U.S. Highway 20 to Waterloo and U.S. Highway 63; then

(13) Proceed north on U.S. Highway 63 through Bremer, Chicksaw, and Howard Counties, skirting the Upper Iowa River at Chester, and crossing onto the State of Minnesota map at Fillmore County, to Minnesota State Highway 56; then

(14) Proceed northwest and northerly on Minnesota State Highway 56 through Mower, Dodge, and Goodhue Counties to Dakota County, where it joins with State Highway 52 on commercial maps, to Interstate Highway 494 (beltway), south of St. Paul; then

(15) Follow Interstate Highway 494 (beltway) northeast into Washington County, returning to the beginning point.

Signed: April 6, 2009.

John J. Manfreda,

Administrator.

Approved: May 3, 2009.

Timothy E. Skud,

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

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 40, 41, 44, and 45

[Docket No. TTB-2009-0002; T.D. TTB-78; Re: Notice No. 95]

RIN 1513-AB72

Implementation of Statutory Amendments Requiring the Qualification of Manufacturers and Importers of Processed Tobacco and Other Amendments Related to Permit Requirements, and the Expanded Definition of Roll-Your-Own Tobacco

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

ACTION: Temporary rule; Treasury decision.

SUMMARY: This temporary rule amends the Alcohol and Tobacco Tax and Trade Bureau regulations to implement certain changes made to the Internal Revenue Code of 1986 by the Children's Health Insurance Program Reauthorization Act of 2009. The principal changes involve permit and related requirements for manufacturers and importers of processed tobacco and an expansion of the definition of roll-your-own tobacco. We also are soliciting comments from all interested parties on these amendments through a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

DATES: Effective Dates: This temporary rule is effective June 22, 2009, through June 22, 2012.

FOR FURTHER INFORMATION CONTACT: Amy R. Greenberg, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau (202-927-8210).

SUPPLEMENTARY INFORMATION:

TTB Authority

Chapter 52 of the Internal Revenue Code of 1986 (IRC) sets forth the Federal excise tax and related provisions that apply to manufacturers and importers of tobacco products and cigarette papers and tubes and to export warehouse proprietors who hold such products, upon which tax has not been paid, pending export. Section 5702(c) of the IRC (26 U.S.C. 5702(c)) defines tobacco products as cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco. Each of these terms is also separately defined in section 5702.

Sections 5712 and 5713 of the IRC (26 U.S.C. 5712 and 5713) require manufacturers and importers of tobacco products and export warehouse