

Fairness Act of 1996.<sup>98</sup> The Commission will submit the final rule to both houses of Congress and to the General Accountability Office.

By the Commission.

Issued: November 19, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

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## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 9

[Docket No. TTB-2015-0006; T.D. TTB-131; Ref: Notice No. 150]

RIN 1513-AC18

#### Establishment of the Eagle Foothills 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 49,815-acre “Eagle Foothills” viticultural area in Gem and Ada Counties in Idaho. The viticultural area lies entirely within the established Snake River Valley 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 December 28, 2015.

**FOR FURTHER INFORMATION CONTACT:** Dominique Christianson, 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. 278.

#### SUPPLEMENTARY INFORMATION:

##### Background on Viticultural Areas

##### TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity

and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120-01, dated December 10, 2013, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

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 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.

##### Eagle Foothills Petition

TTB received a petition from Martha Cunningham, owner of the 3 Horse Ranch Vineyards, on behalf of the local grape growers and vintners, proposing the establishment of the “Eagle Foothills” AVA in Gem and Ada Counties, Idaho. The proposed AVA is immediately north of the city of Eagle and is approximately 10 miles northwest of the city of Boise. The Eagle Foothills AVA is located entirely within the established Snake River Valley AVA (27 CFR 9.208) and does not overlap with any other existing or proposed AVA. The original proposed name for the AVA was “Willow Creek Idaho.” However, TTB determined that the petition did not sufficiently demonstrate that the region is known by that name. Therefore, the petitioner submitted a request to change the proposed AVA name to “Eagle Foothills.”

The proposed Eagle Foothills AVA contains approximately 49,815 acres, with 9 commercially-producing vineyards covering a total of 67 acres distributed throughout the proposed AVA. The petition states that an additional 4 acres will soon be added to an existing vineyard and that an additional 7 commercial vineyards covering approximately 472 acres are planned within the next few years.

According to the petition, the distinguishing features of the proposed Eagle Foothills AVA are its topography, climate, and soils. The proposed AVA is located within the Unwooded Alkaline Foothills ecoregion of Idaho. This ecoregion is defined as an arid, sparsely populated region of rolling foothills, benches, and alluvial fans underlain by alkaline lake bed deposits. A network of seasonal creeks flowing southwesterly through the proposed AVA have created deep gulches and a rugged terrain that has a variety of slope aspects favorable to the vineyard owners. The elevation within the proposed AVA ranges from 2,490 feet to approximately 3,400 feet, with an average elevation of 2,900 feet.

<sup>98</sup> See 5 U.S.C. 804(2).

The high elevations enable cold air to drain from the proposed AVA and pool within the lower surrounding elevations, resulting in fewer damaging frosts within the proposed AVA. The cool climate and relatively short growing season are suitable for growing early- to mid-season varieties of grapes such as Chardonnay, Pinot Gris, and Riesling. The proposed AVA contains a variety of soils, but loams, sandy loams, coarse sandy loams, and stony loams are predominant and are notable for their large, irregularly shaped, coarse grains. Due to the grains' irregular shapes, "pockets" of oxygen form in the soil, which promote healthy root growth and allow for rapid water drainage.

Compared with the proposed AVA, the Emmett Valley and Payette River Plain to the north are lower, flatter, and have greater population density than the proposed AVA. Due to the lower elevations, the region to the north has a warmer climate and a longer growing season than the proposed AVA. The soils in the region to the north of the proposed AVA are derived from active flood plain alluvium. These soils have a finer, more uniform texture and greater water-holding capacity than the soils of the proposed Eagle Foothills AVA.

East of the proposed AVA is the mountainous region known as the Boise Front, which has higher elevations. Due to the higher elevations, the region to the east has a shorter growing season and cooler growing season temperatures than the proposed AVA. The soils of the Boise Front are predominantly composed of granite and volcanic materials and lack the sedimentary materials found in the soils of the proposed AVA.

The Boise River Plain is to the south of the proposed AVA, and this region has lower elevations, shallow slope plains, and a longer growing season than the proposed AVA. The soils in this region are similar to the soils north of the proposed AVA, in that they are derived from flood plain alluvium and are finer than the soils within the proposed Eagle Foothills AVA.

Finally, the region to the west is also within the Boise River Plain which, as mentioned previously, has a lower elevation and warmer temperatures, which provide longer growing seasons than are found within the proposed AVA. Furthermore, when compared to the proposed AVA, the soils in the region to the west are fine-grained and the bedrock has a greater depth.

### Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 150 in the **Federal Register** on April 14, 2015 (80 FR 19908), proposing to establish the Eagle Foothills AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also compared the distinguishing features of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 150.

In Notice No. 150, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. In addition, given the proposed Eagle Foothills AVA's location within the existing Snake River Valley AVA, TTB solicited comments on whether the geographic features of the proposed AVA sufficiently differentiate it from the existing Snake River Valley AVA. Finally, TTB requested comments on whether the geographic features of the proposed AVA are so distinguishable from the surrounding Snake River Valley AVA that the proposed Eagle Foothills AVA should no longer be part of the established AVA. The comment period closed on June 15, 2015. TTB received no comments in response to Notice No. 150.

### TTB Determination

After careful review of the petition, TTB finds that the evidence provided by the petitioner supports the establishment of the Eagle Foothills AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB establishes the "Eagle Foothills" AVA in Gem and Ada Counties in Idaho, effective 30 days from the publication date of this document.

TTB has also determined that the Eagle Foothills AVA will remain part of the established Snake River Valley AVA. As discussed in Notice No. 150, the proposed Eagle Foothills AVA is located along the eastern edge of the Snake River Valley AVA and shares the same broad characteristics of this AVA, in that both regions are semiarid and have vineyards that are planted on slopes to maximize sunlight exposure and minimize the risk of frost. However, the Eagle Foothills AVA receives several more inches of precipitation per year

and has a slightly longer growing season. Additionally, the Snake River Valley AVA contains a large variety of diverse soils, unlike the proposed AVA which has fairly uniform soil characteristics throughout.

### Boundary Description

See the narrative description of the boundary of the Eagle Foothills 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.

### 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 this AVA, its name, "Eagle Foothills," 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 regulation clarifies this point. Consequently, wine bottlers using the name "Eagle Foothills" 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 Eagle Foothills AVA will not affect any existing AVA, and any bottlers using "Snake River Valley" as an appellation of origin or in a brand name for wines made from grapes grown within the Snake River Valley AVA will not be affected by the establishment of this new AVA. The establishment of the Eagle Foothills AVA will allow vintners to use "Eagle Foothills" and "Snake

River Valley” as appellations of origin for wines made primarily from grapes grown within the Eagle Foothills 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

Dominique Christianson of the Regulations and Rulings Division drafted this final rule.

#### List of Subjects in 27 CFR Part 9

Wine.

#### The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

#### PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

#### Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.252 to read as follows:

##### § 9.252 Eagle Foothills.

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

(b) *Approved maps.* The 6 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Eagle Foothills viticultural area are titled:

- (1) Southwest Emmett, Idaho, 1970;
- (2) Southeast Emmett, Idaho, provisional edition 1985;
- (3) Pearl, Idaho, provisional edition 1985;

- (4) Eagle, Idaho, 1998;
  - (5) Star, Idaho, 1953; and
  - (6) Middleton, Idaho, 1958;
- photorevised 1971.

(c) *Boundary.* The Eagle Foothills viticultural area is located in Gem and Ada Counties in Idaho. The boundary of the Eagle Foothills viticultural area is as described below:

(1) The beginning point is on the Southwest Emmett map at the intersection of the Ada, Gem, and Canyon County lines at the southwestern corner of section 31, T6N/R1W.

(2) From the beginning point, proceed north along the western boundary of sections 31 and 30 to the northwest corner of section 31, T6N/R1W; then

(3) Proceed north-northeast in a straight line to the marked 3,109-foot elevation point near the southwest corner of section 31, T6N/R1W; then

(4) Proceed northeast in a straight line, crossing onto the Southeast Emmett map, to the marked 3,230-foot elevation point in section 22, T6N/R1W; then

(5) Proceed east-northeast in a straight line to the marked 3,258-foot elevation point in section 23, T6N/R1W; then

(6) Proceed easterly in a straight line to the 3,493-foot elevation point in section 23, T6N/R1W; then

(7) Proceed northeast in a straight line to the 3,481-foot elevation point in section 13, T6N/R1W; then

(8) Proceed northeast in a straight line to the intersection of the marked 4-wheel drive trail with the R1W range line; then

(9) Proceed north along the R1W range line to its first intersection with the 3,400-foot elevation contour; then

(10) Proceed east along the meandering 3,400-foot elevation contour, crossing onto the Pearl map, then continuing easterly, then southerly, along the meandering 3,400-foot elevation contour, crossing Schiller Creek, the North and South Forks of Willow Creek, and Big Gulch Creek, to the first intersection of the 3,400-foot contour line with the R1E/R2E range line, which forms the eastern boundary of section 13, T5N/R1E; then

(11) Proceed southeast in a straight line to the marked 3,613-foot elevation point in section 18, T5N/R2E; then

(12) Proceed southwest in a straight line to the marked 3,426-foot elevation point in section 24, T5N/R1E; then

(13) Proceed west in a straight line to the marked 3,416-foot elevation point in section 24, T5N/R1E; then

(14) Proceed west in a straight line to the marked 3,119-foot elevation point in section 23, T5N/R1E; then

(15) Proceed south in a straight line to the marked 3,366-foot elevation point in section 23, T5N/R1E; then

(16) Proceed southwest in a straight line, crossing onto the Eagle map, to the marked 3,372-foot elevation point in section 26, T5N/R1E; then

(17) Proceed northwest in a straight line, crossing back onto the Pearl map, to the marked 3,228-foot elevation point in section 22, T5N/R1E; then

(18) Proceed southwest in a straight line to the marked 3,205-foot elevation point in section 22, T5N/R1E; then

(19) Proceed south in a straight line, crossing onto the Eagle map, to the marked 3,163-foot elevation point in section 27, T5N/R1E; then

(20) Proceed southwest in a straight line to the marked 2,958-foot elevation point in section 28, T5N/R1E; then

(21) Proceed southwest in a straight line to the northeast corner of section 32, T5N/R1E; then

(22) Proceed south along the eastern boundary of section 32 to the point where the boundary joins Pearl Road, then continue south along Pearl Road to the intersection of the road with Beacon Road; then

(23) Proceed west along Beacon Road, crossing onto the Star map, to the intersection of Beacon Road with an unnamed light-duty road known locally as North Wing Road at the southern boundary of section 32, T5N/R1W; then

(24) Proceed south along North Wing Road to the intersection of the road with New Hope Road in section 5, T4N/R1W; then

(25) Proceed west along New Hope Road, crossing onto the Middleton map, to the intersection of the road with the Ada-Canyon County line; then

(26) Proceed north along the Ada-Canyon County line, crossing onto the Southwest Emmett map, to the beginning point.

Signed: October 7, 2015.

**John J. Manfreda,**  
Administrator.

Approved: October 28, 2015.

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

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