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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 4

[Docket No. TTB–2015–0003; Notice No. 147]

RIN 1513–AC13

Use of American Viticultural Area Names as Appellations of Origin on Wine Labels

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is proposing to amend its regulations to permit the use of American viticultural area names as appellations of origin on labels for wines that would otherwise qualify for the use of the AVA name, except that the wines have been fully finished in a State adjacent to the State in which the viticultural area is located, rather than the State in which the labeled viticultural area is located. The proposal would provide greater flexibility in wine production and labeling while still ensuring that consumers are provided with adequate information as to the identity of the wines they purchase. TTB permits the use of viticultural area names as appellations of origin on wine labels, so that vintners may better describe the origin of their wines and consumers may better identify the wines they may purchase.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Please send your comments on this proposed rule to one of the following addresses:

- Internet: http://www.regulations.gov (via the online comment form for this proposed rule as posted within Docket No. TTB–2015–0003 at "Regulations.gov," the Federal e-rulemaking portal);
- U.S. Mail: Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; or
- Hand delivery/courier in lieu of mail: Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW, Suite 200–E, Washington, DC 20005.

See the **Public Participation** section of this proposed rule for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this proposed rule and any comments that TTB receives about this proposal at http://www.regulations.gov within Docket No. TTB–2015–0003. A link to that docket is posted on the TTB Web site at http://www.ttb.gov/wine/wine-rulemaking.shtml under Notice No. 147. You also may view copies of this proposed rule and any comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW, Washington, DC 20005. Please call 202–453–2270 to make an appointment.

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 Wine Labeling and 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 (Revised), 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) 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) sets forth standards for the preparation and submission of petitions for the

establishment or modification of American viticultural areas and lists the approved viticultural areas.

Definitions

Appellation of Origin: An appellation of origin may be used on a wine label in order to describe the origin of the fruit or agricultural products used to produce the wine. Section 4.25(a)(1) of the TTB regulations (27 CFR 4.25(a)(1)) defines an appellation of origin for American wine as: (i) The United States; (ii) a State, or (iii) two or no more than three contiguous States; (iv) a county, or (v) two or no more than three counties from the same State; or (vi) a viticultural area. Section 4.25 also sets forth the eligibility requirements for the use of an appellation of origin.

American Viticultural Area (AVA): 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 delineated boundary as established in part 9 of the regulations. These American viticultural area (AVA) 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 geographic origin. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Current Requirements for Use of Appellations of Origin

Section 4.25(b)(1) of the TTB regulations (27 CFR 4.52(b)(1)), in part, sets forth the requirements for labeling an American wine with a State name as an

appellation of origin. For a wine labeled with a State appellation of origin, at least 75 percent of the wine must be derived from fruit or agricultural products grown in the State used as the appellation, and the wine must be fully finished in either the labeled State or in an adjacent State. In the case of multi-State appellations of origin, which may consist of two or three contiguous States, § 4.25(d)(1) requires that all the fruit or other agricultural products used in the wine be grown in the States indicated in the appellation and that the wine must be fully finished within one of those States. Wine is considered to be "fully finished" if it is ready to be bottled, except that cellar treatment and blending that does not result in an alteration of class and type is still permitted.

Section 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)), in part, sets forth the requirements for labeling American wine with an AVA as an appellation of origin. Under this section, at least 85 percent of the wine must be derived from grapes grown within the named AVA. Additionally, in order to use the name of an AVA that is located entirely within a single State, hereinafter referred to as a "single-State AVA," the wine must also be fully finished within the State in which the labeled AVA is located. In the case of AVAs that cover two or more States, hereinafter referred to as "multi-State AVAs," the wine must be fully finished within one of the States in which the AVA is located.

These current regulations, including the requirement that a wine labeled with an AVA appellation of origin must be fully finished within the State (or one of the States) in which the AVA is located, are derived from T.D. ATF–53, published in the **Federal Register** by TTB's predecessor agency, the Bureau of Alcohol,

Tobacco and Firearms (ATF) at 43 FR 37672 on August 23, 1978. Prior to publication of that Treasury Decision, ATF did not have codified definitions for "appellation of origin" or "viticultural area," and there was no systematic approach to designating a region as a "viticultural area." The ATF regulatory requirements for the use of an appellation of origin on a wine label prior to T.D. ATF–53 stated that: (1) At least 75 percent of the wine be derived from fruit or other agricultural products grown in the named region; (2) the wine be fully manufactured and finished within the State containing the named region; and (3) the wine be made in compliance with the named region's laws and regulations.

TTB Notice No. 142—Proposal to Establish The Rocks District of Milton–Freewater AVA

On February 26, 2014, TTB published Notice No. 142 in the **Federal Register**, proposing the establishment of "The Rocks District of Milton–Freewater" AVA in Umatilla County, Oregon (see 79 FR 10742). Elsewhere in this issue of the **Federal Register**, TTB is publishing T.D. TTB–127, which formally establishes The Rocks District of Milton–Freewater as an AVA. The AVA is located near the Oregon–Washington State line, approximately 10 miles south of the city of Walla Walla, Washington. The AVA is also located within the larger Walla Walla Valley and Columbia Valley AVAs, both of which cover portions of Washington and Oregon.

During the public comment period for Notice No. 142, TTB received comments from several winemakers who primarily use grapes grown within The Rocks District of Milton–Freewater but fully finish their wines using custom crush facilities across the State line in Walla Walla, Washington. Some of the

commenters stated that they use custom crush facilities in Walla Walla because there are no such facilities nearby in Oregon. TTB understands custom crush facilities to be businesses that provide a variety of winemaking services, such as grape crushing, fermentation, barrel and tank storage, wine analysis, and bottling, for clients that do not have their own facilities. Other commenters stated that they own wineries in Walla Walla and also own vineyards both in Washington and in The Rocks District of Milton–Freewater AVA.

Because The Rocks District of Milton–Freewater AVA is a single-State AVA located in Oregon, under current TTB wine labeling regulations, none of these commenters would be able to use that AVA name as an appellation of origin, even if 85 percent of the grapes in their wines came from The Rocks District of Milton–Freewater AVA, because their wines are fully finished in Washington. However, their wines could be labeled with the Columbia Valley or Walla Walla Valley AVA names as appellations or origin because The Rocks District of Milton–Freewater AVA is located within both of those AVAs, and both the Columbia Valley and Walla Walla Valley AVAs are multi-State AVAs that cover portions of Oregon and Washington. Additionally, their wines could be labeled simply with the political appellation “Oregon,” since wines labeled with a State appellation of origin may be fully finished in an adjacent State.

Several commenters stated that fully finishing their wines in Oregon, rather than in Washington, would be burdensome because they would have to either transport their grapes to the nearest Oregon custom crush facility, which is over 200 miles away from The Rocks District of Milton–Freewater AVA, or build

their own private wineries in Oregon. Others commented that it makes little sense for TTB to allow the use of a single-State AVA name as an appellation of origin for a wine made from grapes that are grown in that viticultural area but are transported hundreds of miles across a single State, while prohibiting the use of that same AVA name on a wine simply because the grapes are transported across a State line to a winery located only 10 miles from the vineyard. Accordingly, these commenters asked TTB to amend its regulations to allow wines fully finished in Washington to be labeled with The Rocks District of Milton–Freewater AVA appellation of origin, so that consumers would have more detailed and accurate information as to the origin of the grapes used to make the wine.

TTB Analysis

TTB has determined that the concerns raised in the comments on Notice No. 142 have merit. TTB acknowledges that the current regulations would allow wine that is fully finished in Washington and made primarily from grapes grown within The Rocks District of Milton–Freewater AVA to be labeled only with the less specific “Walla Walla Valley,” “Columbia Valley,” or “Oregon” appellations of origin. TTB notes that the purpose of the AVA program is to provide consumers with additional information on the wines they may purchase by allowing vintners to describe more accurately the origin of the grapes used in the wine. Therefore, TTB is proposing to amend its regulations at § 4.25(e)(3)(iv) to allow wines that meet the requirements of § 4.25(e)(3)(i) and (ii) to be labeled with a single-State

AVA name as an appellation of origin if the wine was fully finished either within the State in which the AVA is located or within an adjacent State.

TTB believes that vintners, grape growers, and consumers would benefit from the removal of the requirement in § 4.25(e)(3)(iv) that wines labeled with an AVA appellation of origin be fully finished within the same State as the AVA. Vintners would have a greater choice in both where they fully finish their wines and what appellation of origin they use. Grape growers within a single-State AVA may have more buyers for their grapes if vintners in adjacent States are allowed to label their wines with the AVA name. Finally, consumers would have a more accurate idea of the origin of the grapes in their wine if vintners who fully finish their wine in a State adjacent to the State where the AVA is located were able to label their wines with a more specific single-State AVA appellation of origin, such as The Rocks District of Milton–Freewater, rather than a less specific State appellation of origin, such as Oregon, or even a broader multi-State appellation of origin, such as Columbia Valley.

TTB does not believe that the proposed amendment will cause consumer confusion. Section 4.25(b)(1)(ii) allows wines eligible for labeling with a State appellation of origin to be fully finished in an adjacent State. Section 4.25(e)(3)(iv) only requires wine labeled with any AVA appellation of origin to have been fully finished somewhere within the State in which the AVA is located, not within the AVA itself. Additionally, § 4.25(e)(3)(iv) currently allows wines eligible for labeling with a multi-State appellation of origin to be fully finished within any one of the States in which the AVA is located, not just within the State

in which the grapes were grown. Since the promulgation of the appellation of origin regulations, TTB is not aware of any reported instances in which the regulations regarding the fully finishing of wine in an adjacent State resulted in consumer confusion relating to the origin of the wine or grapes. Therefore, TTB believes consumers are aware that the appellation of origin on a wine label is a statement of the origin of the grapes used to make the wine, and it would not be misleading or confusing to consumers if a wine labeled with a single-State AVA appellation of origin was actually fully finished in an adjacent State.

Therefore, for the reasons discussed above, TTB is proposing to amend its regulations to allow wines that meet the requirements of § 4.25(e)(3)(i) and (ii) to be labeled with a single-State AVA appellation of origin if the wine is fully finished either within the State in which the AVA is located or an adjacent State. If adopted, this amendment would bring the requirements for using a single-State AVA appellation of origin more in line with the requirements for using a State appellation of origin. This change would give grape growers and wine makers within a single-State AVA greater flexibility and more options in producing and marketing their products, options that are currently available to growers and wine makers within multi-State AVAs and those who use State appellations of origin. Additionally, the amendment would enable wine producers to provide consumers with more specific information on the origin of the grapes used to make the wine.

TTB's proposed changes to its appellations of origin regulations are limited to the scope of the commenters' request, which was, specifically, to allow wines to be labeled with a single-State AVA appellation of origin even if the wine

was fully finished in a State adjacent to the State in which the AVA is located. Therefore, TTB is not proposing any additional changes to the regulations concerning the use of appellations of origin, including the percentage of grapes used in the wine that must come from the labeled appellation or the requirements for use of the term “estate bottled” in conjunction with an AVA appellation of origin.

Furthermore, TTB is not proposing any changes to the regulations concerning the use of multi-State AVA names as appellations of origin because the commenters’ request was limited to single-State AVAs. Additionally, winemakers who label their wines with a multi-State AVA appellation of origin already have the flexibility to use winemaking facilities, including custom crush facilities, in at least one other State if they choose, unlike winemakers who label their wines with a single-State AVA appellation of origin. However, TTB is interested in hearing from winemakers whose wines are ineligible to be labeled with a multi-State AVA appellation of origin solely because they fully finish their wines in an adjacent State that is not part of the multi-State AVA.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on the proposed changes to the regulations regarding the use of AVA names as appellations of origin on wine labels. TTB is particularly interested in how effectively the proposed changes will further TTB’s mission of ensuring that consumers are provided with adequate information about the identity of beverage

alcohol products and preventing consumer deception. Please provide specific information in support of your comments.

Although the amendment in this notice of proposed rulemaking is limited to wines labeled with a single-State AVA appellation of origin, TTB is interested in comments on whether TTB should propose a similar amendment for wines labeled with multi-State AVA appellations of origin. Additionally, TTB would like comments on whether TTB should allow wines labeled with any domestic appellation of origin to be fully finished in any U.S. State. TTB may consider these comments for future rulemakings.

Submitting Comments

You may submit comments on this proposed rule by using one of the following three methods:

- Federal e-Rulemaking Portal: You may send comments via the online comment form posted with this proposed rule within Docket No. TTB–2015–0003 on "Regulations.gov," the Federal e-rulemaking portal, at http://www.regulations.gov. A direct link to that docket is available under Notice No. 147 on the TTB Web site at http://www.ttb.gov/wine/wine-rulemaking.shtml. 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 "Help" tab.

- 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.

- Hand Delivery/Courier: You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW, Suite 200–E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this proposed rule. Your comments must reference Notice No. 147 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. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name as well as your name and position title. In your 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 or hand delivery/courier, 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 proposed rule and any online or mailed comments received about this proposal within Docket No. TTB–2015–0003 on the Federal e-rulemaking portal, Regulations.gov, at http://www.regulations.gov. A direct link to that docket is available on the TTB Web site at http://www.ttb.gov/wine/wine-rulemaking.shtml under Notice No. 147. You may also reach the relevant docket through the Regulations.gov search page at http://www.regulations.gov. For information on how to use Regulations.gov, click on the site's "Help" tab.

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 the Bureau considers unsuitable for posting.

You may also view copies of this proposed rule and any electronic or mailed comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW, Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact TTB's information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or 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 amendments merely provide industry members with more options and additional flexibility in wine labeling decisions. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed 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

Karen A. Thornton of the Regulations and Rulings Division drafted this notice of proposed rulemaking.

List of Subjects in 27 CFR Part 4

Administrative practice and procedure, Advertising, Labeling, Packaging and containers, Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 4, Code of Federal Regulations, as follows:

PART 4—LABELING AND ADVERTISING OF WINE

1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

Subpart C—Standards of Identity for Wine

2. Section 4.25 is amended by revising paragraph (e)(3)(iv) to read as follows:

§ 4.25 Appellations of origin.

* * * * *

(e) * * *

(3) * * *

(iv) In the case of American wine, it has been fully finished (except for cellar treatment pursuant to § 4.22(c), and blending which does not result in an alteration of class and type under § 4.22(b)) within the State the viticultural area is located in or an adjacent State, or, for a viticultural area located in two or more contiguous States, within one of the States in which the viticultural area is located.

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Signed: December 2, 2014.

John J. Manfreda,

Administrator.

Approved: December 22, 2014.

Timothy E. Skud,

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

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