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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2014–0003; T.D. TTB–127; Ref: Notice No. 142]

RIN 1513–AC05

Establishment of The Rocks District of Milton–Freewater 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 3,770-acre “The Rocks District of Milton–Freewater” viticultural area in Umatilla County, Oregon. The viticultural area lies entirely within the Walla Walla Valley viticultural area which, in turn, lies within the Columbia 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 [INSERT DATE 30 DAYS FROM 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

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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 (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) authorizes 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 (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.

The Rocks District of Milton–Freewater Petition

TTB received a petition from Dr. Kevin R. Pogue, a professor of geology at Whitman College in Walla Walla, Washington, proposing the establishment of the “The Rocks District of Milton–Freewater” AVA in Umatilla County, Oregon, near the town of Milton–Freewater. The proposed AVA lies entirely within the Oregon portion of the Walla Walla Valley AVA (27 CFR 9.91), which covers portions of Walla Walla County, Washington and Umatilla County, Oregon. The Walla Walla Valley AVA is, in turn, entirely within the larger Columbia Valley AVA (27 CFR 9.74), which covers multiple counties in Washington and Oregon. The proposed AVA contains approximately 3,770 acres and has approximately 250 acres of commercially producing vineyards. The petition names 19 wine producers that have vineyards within the proposed AVA, and it notes that three of the 19 producers also have winery facilities within the proposed AVA.

According to the petition, the distinguishing feature of the proposed The Rocks District of Milton–Freewater AVA is its soil. Approximately 96 percent of the proposed AVA is covered with soil from the Freewater series, including Freewater very cobbly loam and Freewater gravelly silt loam. These soils contain large amounts of loose, uncemented gravel, cobbles, and boulders that form very deep layers. The rockiness of Freewater series soils prevents erosion and discourages rot and mildew by allowing water to drain freely. The depth of the soil allows roots to penetrate 30 feet or more before hitting a restrictive layer of bedrock or cemented soil. The numerous cobbles in the soil absorb and store solar radiation, which raises the soil and air temperatures and reduces the risk of frost damage in the late spring and early fall. Finally, soils of the Freewater series contain high amounts of calcium, titanium, and iron, which are important nutrients for vine growth.

By contrast, the soils surrounding the proposed The Rocks District of Milton–Freewater AVA are silt loams from the Walla Walla, Ellisforde, Yakima, Umapine, Hermison, Onyx, and Oliphan series. Cobbles are uncommon or entirely absent from these soils. The soils are also not as deep as soils of the Freewater series and are often underlain by dense, compacted layers of sand and silt called “Touchet beds.” The soils are also less resistant to erosion than Freewater series soils and contain lower levels of calcium, titanium, and iron.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 142 in the **Federal Register** on February 26, 2014 (79 FR 10742), proposing to establish The Rocks District of Milton–Freewater AVA. In the proposed rule, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing feature—its cobbly soils—for the proposed AVA. The proposed rule also compared the distinguishing feature of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing feature of the proposed AVA, and for a comparison of the distinguishing feature of the proposed AVA to the surrounding areas, see Notice No. 142.

In Notice No. 142, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. In addition, TTB solicited comments on whether the geographic features of the proposed The Rocks District of Milton–Freewater AVA are so distinguishable from the established Walla Walla Valley AVA and Columbia Valley AVA that the proposed AVA should not be part of those AVAs. Additionally, TTB asked for comments from winemakers who produce wine made primarily from grapes grown within the proposed AVA but who would be ineligible to use the proposed AVA name because their wines are fully finished in facilities located in the nearby city of Walla Walla, Washington. The comment period closed on April 28, 2014.

Comments Received

In response to Notice No. 142, TTB received a total of 20 comments, all of which supported the establishment of The Rocks District of Milton–Freewater

AVA. Commenters included local vineyard owners and winemakers, a wine reporter, and a regional alliance of winemakers. TTB received no comments opposing the establishment of The Rocks District of Milton–Freewater AVA. TTB also did not receive any comments in response to its question of whether the proposed The Rocks District of Milton–Freewater AVA is so distinguishable from the established Walla Walla Valley and Columbia Valley AVAs that the proposed AVAs should not be part of the established AVAs.

Use of USGS Topographic Maps to Draw AVA Boundaries

One of the comments (comment 14) was from the owner of a vineyard and winery located within the proposed AVA. Although the commenter expressed support for the establishment of the proposed AVA, he also stated his concern regarding TTB's requirement that AVA boundaries be drawn using features found on USGS topographic maps. The commenter stated that because only USGS maps were used to draw the boundary, the proposed AVA contains some soil that is not of the Freewater series, which is the distinguishing feature of the proposed AVA, and also omits small pockets of land containing Freewater series soils. The commenter suggested that TTB amend its regulations to allow AVA boundaries to be drawn using "geologic or soils series contacts on published geologic and soil maps."

Section 9.12(a)(4) of the TTB regulations (27 CFR 9.12(a)(4)) requires proposed AVA boundaries to be drawn using features found on USGS maps, such as roads, elevation contours, range and township lines, rivers, and mountain peaks. TTB's requirement mandating the use of this type of map to

mark AVA boundaries facilitates the establishment of new AVAs that share a concurrent boundary, or are located entirely within or entirely overlap an established AVA, by ensuring that the features used to draw the boundary of one AVA also appear on the maps used to draw the boundary of the other. For example, it would be difficult to determine the exact location of a new AVA in relation to an established AVA if the new AVA's boundaries followed elevation contours and roads found on a USGS map, but the established AVA's boundaries were marked on a soil survey map that did not include elevation contours or roads. Furthermore, amending the regulation requiring the use of USGS maps for AVA boundary descriptions is outside the scope of the notice of proposed rulemaking to establish The Rocks District of Milton–Freewater AVA and would require a separate rulemaking. Therefore, TTB is not taking any action on this comment in this final rule.

Impact on Wines Fully Finished Across State Lines

Of the 20 comments received in response to Notice No. 142, 16 comments addressed the issue of wines fully finished in the State of Washington from grapes grown primarily within the proposed The Rocks District of Milton–Freewater AVA (comments 2, 3, 5–11, 13, and 15–20). Section 4.25(e)(3)(iv) of TTB regulations (27 CFR 4.25(e)(3)(iv)) requires wines labeled with an AVA appellation of origin to be “fully finished within the State, or one of the States, within which the labeled viticultural area is located.” Currently, there are individuals who use facilities in the nearby city of Walla Walla, Washington, to fully finish wine made primarily from grapes grown within the proposed AVA, in

part because of a lack of custom crush or alternating proprietorship facilities nearby in Oregon. Additionally, several winery owners located in Walla Walla stated that they also own vineyards within the proposed AVA and currently produce wines from those grapes in their Walla Walla facilities. Under the current TTB regulations, such Washington-produced wines would be eligible to use the “Walla Walla Valley” or “Columbia Valley” AVA names, due to the proposed AVA’s location within both of those multistate AVAs, but the wines would not be eligible to use “The Rocks District of Milton–Freewater” as an appellation of origin because the wine is finished in Washington, outside the state in which the AVA is located.

Each of the 16 comments stated that TTB should amend its regulations to allow wines produced primarily from grapes grown within the proposed AVA to be labeled with “The Rocks District of Milton–Freewater” AVA name even if the wines are produced in facilities in Washington. Of these commenters, 9 were from individuals who specifically stated that they own vineyards within the proposed AVA but own or use facilities in Walla Walla for the production of wine (comments 5, 6, 7, 9, 10, 11, 13, 18, and 19). Four comments (comments 2, 3, 8, and 15) were from individuals who would not be affected directly by the TTB restriction but still expressed support for amending the regulations in order to benefit other growers and winemakers who may be impacted. An additional comment (comment 16) was from the Walla Walla Valley Wine Alliance, on behalf of its members in both Washington and Oregon. Another comment was from the editor and publisher of Washington Wine Report (comment 17). The

final comment (comment 20) was submitted on behalf of a California-based winery and a Washington-based winery, both of which source grapes from the proposed AVA.

All 16 of the comments essentially stated that it is unreasonable for TTB to allow wine made with grapes grown within the proposed AVA and fully finished in Washington to be labeled with the “Walla Walla Valley” or “Columbia Valley” viticultural areas as appellations of origin, but not with “The Rocks District of Milton–Freewater.” One commenter (comment 3) stated that the current TTB regulations would “jeopardize the vineyard owners’ ability to sell their grapes as the number of winemakers within a reasonable range who finish their wines in Oregon is limited.” Another commenter (comment 6) believes the regulations should be changed because “almost all of the grapes grown [within the proposed AVA] are used by Washington wineries * * *,” meaning that very few wines would be eligible to use the proposed AVA name as an appellation of origin. The Walla Walla Valley Wine Alliance (comment 16) also notes that “[w]ines made in Washington from grapes sourced within the proposed AVA constitute a significant percentage of the wines produced by several Washington wineries,” none of which would be able to use the proposed AVA name as an appellation of origin.

A small wine producing company that owns a vineyard within the proposed AVA states that it uses a custom crush facility in the city of Walla Walla because “[t]his is a very practical business model for us because of the high cost of building a facility and the concentration of resources * * * in Walla Walla”

(comment 13). The company goes on to say that the inability to use “The Rocks District of Milton–Freewater” as an appellation of origin for their wines “will be confusing to consumers” because wine that is, in the commenter’s words, “100% ‘The Rocks District’ wine” will have to be labeled as “Walla Walla Valley” or “Columbia Valley.” Because a viticultural area designation is meant to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase, the commenter believes that the company’s use of “The Rocks District of Milton-Freewater” as an appellation of origin on their wines will further both aforementioned goals.

Finally, the editor and publisher of the Washington Wine Report (comment 17) offered a scenario to demonstrate the “contradictions” inherent in the current TTB regulations. He notes that “a winery could source grapes from The Rocks District and then drive 450 miles down to the Rogue Valley [in southwestern Oregon] and label the wines as from The Rocks District of Milton–Freewater.” He continues, “However, a winery would not be able to truck the grapes 10 miles north to Walla Walla and do the same * * *. This defies logic and surely was not the intention of this regulation.”

TTB believes that amending the regulations in 27 CFR 4.25(e)(3)(iv) to allow AVA appellations of origin on labels of wine made outside the State in which the AVA is located would require a notice of proposed rulemaking and public comment period. Although Notice No. 142 requested comments concerning the appellation of origin regulations, the proposed rule did not formally propose any specific changes to those regulations. Additionally, any

changes to the regulations concerning the use of AVA names as appellations of origin would apply not only to persons wanting to use “The Rocks District of Milton–Freewater” as an appellation of origin. Therefore, TTB is not proposing to make any changes to the regulation in this final rule.

However, TTB believes that the number of comments submitted in response to Notice No. 142 indicates that there is at least regional support for amending the regulations regarding the use of AVA names as appellations of origin. Therefore, elsewhere in this issue of the **Federal Register**, TTB is publishing a notice of proposed rulemaking, Notice No. 147, proposing to allow wine to be labeled with an AVA appellation of origin if the wine is fully finished, except for cellar treatment or blending that does not alter the class and type of the wine, in a State adjacent to the State in which the AVA is located. Please refer to Notice No. 147 for information on how to submit comments to TTB regarding the proposed amendment to the regulations.

TTB Determination

After careful review of the petition and the comments received in response to Notice No. 142, TTB finds that the evidence provided by the petitioner supports the establishment of The Rocks District of Milton–Freewater 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 “The Rocks District of Milton–Freewater” AVA in Umatilla County, Oregon, effective 30 days from the publication date of this document.

TTB has also determined that The Rocks District of Milton–Freewater AVA will remain part of both the established Walla Walla Valley and Columbia Valley AVAs. As discussed in Notice No. 142, the elevations, topography, growing season, and climate of The Rocks District of Milton–Freewater AVA are similar to those of both the Walla Walla Valley and Columbia Valley AVAs. However, approximately 96 percent of The Rocks District of Milton–Freewater AVA is covered by heavily cobbled Freewater series soils, which are found only in miniscule amounts elsewhere in the Walla Walla Valley and Columbia Valley AVAs, thus distinguishing the proposed AVA from the existing, surrounding AVAs.

Boundary Description

See the narrative description of the boundary of the 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, “The Rocks District of Milton–Freewater,” will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). TTB has also determined that the phrase “The Rocks of Milton–Freewater” has viticultural significance in relation to the AVA. The text of the regulation clarifies this point. Consequently, wine bottlers using the name “The Rocks District of Milton–Freewater” or “The Rocks of Milton–Freewater” 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 Rocks District of Milton–Freewater AVA will not affect any existing AVA, and any bottlers using “Walla Walla Valley” or “Columbia Valley” as an appellation of origin or in a brand name for wines made from grapes grown within the Walla Walla Valley or Columbia Valley AVAs will not be affected by the establishment of this new AVA. The establishment of The Rocks District of Milton–Freewater AVA will allow vintners to use “The Rocks District of Milton–Freewater,” “Walla Walla Valley,” and “Columbia Valley” as appellations

of origin for wines made from grapes grown within The Rocks District of Milton–Freewater 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

Karen A. Thornton 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 § 9.249 to read as follows:

§ 9.249 The Rocks District of Milton–Freewater.

(a) Name. The name of the viticultural area described in this section is “The Rocks District of Milton–Freewater”. For purposes of part 4 of this chapter, “The Rocks District of Milton–Freewater” and “The Rocks of Milton–Freewater” are terms of viticultural significance.

(b) Approved maps. The two United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of The Rocks District of Milton–Freewater viticultural area are titled:

- (1) Milton–Freewater, Oreg., 1964; and
- (2) Bowlus Hill, Oreg., 1964; photoinspected 1976.

(c) Boundary. The Rocks District of Milton–Freewater viticultural area is located in Umatilla County, Oregon. The boundary of The Rocks District of Milton–Freewater viticultural area is as follows:

- (1) The beginning point is found on the Milton–Freewater map at the intersection of an unnamed medium-duty road known locally as Freewater Highway (State Route 339) and an unnamed light-duty road known locally as Crockett Road, section 26, T6N/R35E. From the beginning point, proceed east-southeasterly in a straight line for 0.8 mile to the intersection of State Highway 11

(Oregon–Washington Highway) and an unnamed light-duty road known locally as Appleton Road, section 25, T6N/R35E; then

(2) Proceed southeasterly in a straight line for 1.05 miles, crossing onto the Bowlus Hill map, to the intersection of three unnamed light-duty roads known locally as Grant Road, Turbyne Road, and Pratt Lane on the common boundary between section 36, T6N/R35E, and section 31, T5N/R36E; then

(3) Proceed southwesterly in a straight line for 1.1 miles, crossing back onto the Milton–Freewater map, to the intersection of the Union Pacific railroad tracks with the Walla Walla River, section 1, T5N/R35E; then

(4) Proceed southwesterly and then west-northwesterly along the Union Pacific railroad tracks for 1.2 miles to the intersection of the railroad tracks with the 980-foot elevation contour line, approximately 0.15 mile west of Lamb Street, section 2, T5N/R35E; then

(5) Proceed west-northwesterly in a straight line for 2.25 miles to the intersection of the 840-foot elevation contour line and an unnamed light-duty road known locally as Lower Dry Creek Road, section 33, T6N/R35E; then

(6) Proceed northwesterly in a straight line for 0.8 mile to the intersection of the 800-foot elevation contour line with an unnamed light-duty road running north-south in section 32, T6N/R35E; then

(7) Proceed easterly in a straight line for 0.9 mile to the intersection of the 840-foot elevation contour line with the Hudson Bay Canal, section 33, T6N/R35E; then

(8) Proceed due north in a straight line for 0.25 mile to the line's intersection with Sunnyside Road, section 33, T6N/T35E; then

(9) Proceed northeasterly in a straight line for 0.5 mile to the intersection of the 840-foot elevation contour line with an unnamed medium-duty road known locally as State Highway 332 (Umapine Highway), eastern boundary of section 28, R6N/T35E; then

(10) Proceed east-northeasterly in a straight line for 0.3 mile to the intersection of three unnamed light-duty roads known locally as Triangle Road, Hodgen Road, and Appleton Road, section 27, T6N/R35E; then

(11) Proceed east-northeasterly in a straight line for 1.25 miles, returning to the beginning point.

Signed: December 2, 2014.

John J. Manfreda,

Administrator.

Approved: December 22, 2014.

Timothy E. Skud,

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