

Dated: July 29, 2016.

Suzanne Palmieri,

Acting Administrator, Foreign Agricultural Service.

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB-2016-0002; T.D. TTB-143; Ref: Notice No. 157]

RIN 1513-AC23

Establishment of the Willcox 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 526,000-acre “Willcox” viticultural area in portions of Graham and Cochise Counties in southeastern Arizona. The “Willcox” viticultural area is not located within any other 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 October 12, 2016.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202-453-1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The

Secretary has delegated various authorities through Treasury Department Order 120-01, dated December 10, 2013 (superseding Treasury Order 120-01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these laws.

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.

Willcox Petition

TTB received a petition from Paul S. Hagar, the special projects manager of Dragoon Mountain Vineyard, on behalf of Dragoon Mountain Vineyard and other local winery and vineyard owners, proposing the establishment of the “Willcox” AVA. The proposed AVA contains approximately 526,000 acres, and there are 21 commercially-producing vineyards covering a total of approximately 454 acres distributed throughout the proposed AVA, along with 18 wineries. According to the petition, an additional 650 acres of vineyards are planned for the near future. The proposed Willcox AVA is not located within any established AVA. According to the petition, the distinguishing features of the proposed Willcox AVA are its geology, topography, soils, and climate.

The proposed AVA is in the Arizona geological province known as the “basin-and-range” province, which is characterized by high mountain ranges that are separated by valleys. The proposed Willcox AVA is located within a broad, shallow basin and is surrounded by higher mountain ranges including the Chiricahua, Dos Cabezas, Pinalenos, Dragoon, Little Dragoon, and Winchester Mountains. The underlying geology of the proposed AVA is comprised mainly of water-borne and wind-borne deposits, in contrast to the surrounding mountain ranges which are comprised of igneous rock and other volcanic materials. Over time, the geologic activity of the region has disrupted the flow of creeks, rivers, and drainage systems and has left the proposed AVA in a “closed basin.” Because the basin is “closed,” the aquifer beneath the proposed AVA is recharged only through rainfall, in contrast to the nearby “open basin” valleys which have year-round or seasonal creeks. Therefore, vineyard owners within the proposed AVA use drip irrigation to conserve water.

The topography within the proposed Willcox AVA is relatively uniform and very flat, with slope angles ranging from 0 to 1.5 percent. The very shallow slopes, combined with the lack of creeks or streams, reduces the risk of erosion

within the proposed AVA. Because the proposed AVA is surrounded by higher, steeper mountains, cool nighttime air flowing down from those mountains settles in the vineyards within the proposed AVA. In the early spring, this cool air can increase the risk of frost damage to new shoots and buds, so vineyard owners often install large fans to mix the warmer ambient air with the cooler descending air streams and prevent the cool air from pooling.

The most prevalent soils within the proposed Willcox AVA are Tubac, Sonoita, Forrest, and Frye soils, which are predominately loams comprised of sand, silt, and clay in relatively even proportions. Loamy soils retain adequate amounts of moisture to hydrate vineyards while allowing excess water to percolate quickly through to the aquifer. Loamy soils are also generally high in nutrients and, therefore, are not typically preferred for vineyards because the nutrient levels can promote overly vigorous vine and leaf growth. However, the petition states that the stress placed on vines by the hot, dry climate of the proposed AVA keeps vine and leaf growth in check. The soils of the surrounding regions are also mostly loams. However, the four major soils of the proposed AVA do not make up as large a percentage of the surrounding area, except within the Chiricahua Mountains to the southeast of the proposed AVA, where Tubac soils are more prevalent than within the proposed Willcox AVA.

Southeast Arizona, including the region of the proposed Willcox AVA, is generally considered to have an arid climate. The most significant rainfall occurs during the monsoon season, in July and August, when humid air flows into the region from both the Gulf of Mexico and the Gulf of California. As the humid air rises over the mountains that surround the proposed AVA, the air cools and eventually reaches the point where it releases the moisture in the form of rain. As the storms move beyond the mountains and foothills, they begin to weaken and dissipate. Therefore, growing season precipitation amounts are typically lower in the proposed Willcox AVA than in the surrounding mountains.

In the region of the proposed Willcox AVA, elevation also plays a role in climate. Regions at higher elevations typically have lower growing season temperatures than regions at lower elevations. The proposed AVA has higher growing season temperatures than the higher surrounding mountains, including the Chiricahua Mountains to the southeast. Large valleys lie beyond the mountain ranges that surround the

proposed AVA. These valleys are at lower elevations than the proposed Willcox AVA and, therefore, have higher growing season temperatures.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 157 in the **Federal Register** on January 21, 2016 (81 FR 3356), proposing to establish the Willcox AVA. In that document, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The proposed rule also compared the distinguishing features of the proposed AVA to the features of 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. 157.

In Notice No. 157, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. The comment period closed on March 21, 2016. TTB received three comments in response to Notice No. 157. Two of the three comments were from local residents who supported the proposed AVA. One of the supporting comments (comment 3) was submitted by a representative of Cellar 433 winery and its Dragoon Mountain Vineyard and included three letters of support for the proposed AVA from other wine industry members within the proposed AVA. The three letters were dated in 2013 and were provided at that time to the Willcox AVA petitioner, who was also an employee of Dragoon Mountain Vineyards. However the letters were not included with the proposed Willcox AVA petition, nor had they been received by TTB prior to the opening of the comment period. The three letters support the proposed Willcox AVA and also mention support for a "Chiricahua Foothills" AVA. TTB notes that the proposed Willcox AVA petition was submitted simultaneously with a petition to establish an adjacent "Chiricahua Foothills" AVA, but that petition was not accepted as perfected by TTB, and the comments regarding the petitioned-for Chiricahua Foothills are not being considered as part of this rulemaking.

TTB received one comment from a local resident (comment 2) opposing the establishment of an AVA "in the foothills of the Chiricahua Mountains * * *." The commenter states his belief that vineyards "fragment the open spaces that ranches provide, disrupt the

watershed and block wildlife patterns." The commenter also states his belief that the vineyards in the Willcox region do not provide economic benefit to the community because most of the vineyards "are not sustainable economically" and employ seasonal workers from outside the area.

TTB's purpose in establishing an AVA is to allow winemakers to more accurately describe the origins of the grapes used to make their wine, so that consumers can have more information about the wines they may purchase. Economic benefits and other impacts derived from the use of an AVA name are the result of a proprietor's efforts and consumer acceptance of wines from that area.

Section 4.25 of the TTB regulations defines an AVA as a delimited grape-growing region having distinguishing features and a name and delineated boundary as described in part 9 of the regulations. Section 9.12 of the TTB regulations requires an AVA petition to provide sufficient name and geographical and/or climatic information, data, and evidence to enable TTB to determine whether the features of the proposed AVA are distinguishable from the surrounding regions and have an effect on viticulture. TTB determined that the petition to establish the proposed Willcox AVA contained sufficient evidence to merit notice and comment. Furthermore, TTB has determined that the opposing comment did not contain any evidence to contradict the name or distinguishing features data contained in the petition. Therefore, TTB does not believe that there is sufficient evidence to warrant the withdrawal or modification of the proposal to establish the Willcox AVA.

TTB Determination

After careful review of the petition and the comments received, TTB finds that the evidence provided by the petitioner supports the establishment of the Willcox AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the "Willcox" AVA in southeastern Arizona, effective 30 days from the publication date of this document.

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, "Willcox," 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 "Willcox" 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 Willcox AVA will not affect any existing AVA. The establishment of the Willcox AVA will allow vintners to use "Willcox" as an appellation of origin for wines made primarily from grapes grown within the Willcox 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 § 9.259 to read as follows:

§ 9.259 Willcox.

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

(b) *Approved maps.* The 21 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Willcox viticultural area are titled:

- (1) Fort Grant, AZ, 1996;
- (2) West of Greasewood Mountain, AZ, 1996;
- (3) Greasewood Mountain, AZ, 1996;
- (4) Willcox North, AZ, 1996;
- (5) Railroad Pass, Ariz., 1979;
- (6) Simmons Peak, AZ, 1996;
- (7) Dos Cabezas, AZ, 1996;
- (8) Pat Hills North, Ariz., 1974;
- (9) Pat Hills South, Arizona, 1986

provisional edition;

- (10) Sulphur Hills, AZ, 1996;
- (11) Pearce, AZ., 1996;
- (12) Turquoise Mountain, AZ, 1996;
- (13) Black Diamond Peak, AZ, 1996;
- (14) Cochise Stronghold, AZ, 1996;
- (15) Cochise, AZ, 1996;
- (16) Red Bird Hills, AZ, 1996;
- (17) Steele Hills, AZ, 1996;
- (18) Square Mountain, AZ, 1996;
- (19) Muskog Mountain, AZ, 1996;
- (20) Reiley Peak, AZ, 1996; and
- (21) Sierra Bonita Ranch, Ariz., 1972.

(c) *Boundary.* The Willcox viticultural area is located in Cochise and Graham

Counties in southeastern Arizona. The boundary of the Willcox viticultural area is as described below:

(1) The beginning point is on the Fort Grant map at the intersection of State Highway 266 and an unnamed light-duty road known locally as Curtis Parkway, in Fort Grant, section 35, T9S/R23E. From the beginning point, proceed south-southeast in a straight line approximately 20.4 miles, crossing over the West of Greasewood Mountain and the Greasewood Mountain map and onto the Willcox North map, to the intersection of three unnamed light-duty roads known locally as Porters Ranch Road, East Saguario Road, and North Circle I Road, near benchmark (BM) 4,243 on the Willcox North map, section 36, T12S/R24E; then

(2) Proceed east in a straight line approximately 5 miles to Interstate Highway 10 near the community of Raso, section 1, T13S/R25E; then

(3) Proceed south in a straight line approximately 0.8 mile to the 4,400-foot elevation contour, section 1, T13S/R25E; then

(4) Proceed southwesterly along the 4,400-foot elevation contour around the west end of the Dos Cabezas Mountains and continue southeasterly along the 4,400-foot elevation contour for a total of approximately 13.3 miles, crossing over the Railroad Pass map and onto the Simmons Peak map, to State Highway 186 on the Simmons Peak map, section 28, T14S/R26E; then

(5) Proceed south-southeast in a straight line approximately 15.8 miles, crossing over the Dos Cabezas map and onto the Pat Hills North map, to the intersection of the 4,700-foot elevation contour and an unnamed light-duty road known locally as East Creasey Ranch Road on the Pat Hills North map near BM 4,695, section 21, T16S/R28E; then

(6) Proceed southerly along the 4,700-foot elevation contour approximately 10.6 miles, crossing onto the Pat Hills South map, to an unnamed light-duty road known locally as East Uncle Curtis Lane, section 7, T18S/R28 E; then

(7) Proceed west along East Uncle Curtis Lane approximately 0.5 mile to an unnamed light-duty road known locally as South Single Tree Lane near the marked 4,664-foot elevation point, section 7, T18S/R28E; then

(8) Proceed south along South Single Tree Lane approximately 0.5 mile to State Highway 181, section 7, T18S/R28E; then

(9) Proceed west along State Highway 181 approximately 9.9 miles, crossing onto the Sulphur Hills map, to State Highway 191, section 10, T18S/R26E; then

(10) Proceed north-northeasterly, then west, along State Highway 191 approximately 4.8 miles, crossing onto the Pearce map, to an unnamed light-duty road known locally as Kansas Settlement Road, near BM 4,327, section 36, T17S/R25E; then

(11) Proceed southwest in a straight line approximately 8.9 miles, crossing over the Turquoise Mountain map and onto the Black Diamond Peak map, to the southeastern-most corner of the boundary of the Coronado National Forest on the Black Diamond Peak map, section 35, T18S/R24 E; then

(12) Proceed north along the boundary of the Coronado National Forest approximately 2 miles to the marked 4,821-foot elevation point, section 26, T18S/R24E; then

(13) Proceed north-northwest in a straight line approximately 13 miles, crossing over the Cochise Stronghold map and onto the Cochise map, to the northeastern corner of the boundary of the Coronado National Forest at the marked 4,642 elevation point on the Cochise map, section 26, T16S/R23E; then

(14) Proceed north-northwest in a straight line approximately 1.2 miles to the intersection of the 4,450-foot elevation contour and an unnamed secondary highway known locally as West Dragoon Road, section 23, T16S/R23E; then

(15) Proceed north in a straight line approximately 1.3 miles to the 4,400-foot elevation contour, section 11, T16S/R23E; then

(16) Proceed generally northerly along the 4,400-foot elevation contour approximately 10 miles, crossing onto the Red Bird Hills map, to Interstate Highway 10, section 3, T15S/R23E; then

(17) Proceed north-northwest in a straight line approximately 5.8 miles, crossing onto the Steele Hills map, to the intersection of the 4,600-foot elevation contour and an unnamed light-duty road known locally as West Airport Road, section 7, T14S/R23E; then

(18) Proceed east-northeasterly, then easterly, then northerly, then easterly along West Airport Road approximately 7.2 miles, crossing back onto the Red Bird Hills map and then onto the Square Mountain map, to the 4,240-foot elevation contour east of BM 4,264, section 6, T14S/R24E; then

(19) Proceed north-northwest in a straight line approximately 20.5 miles, crossing over the Muskhog Mountain and Reiley Peak maps and onto the Sierra Bonita Ranch map, to the intersection of two unnamed light-duty roads known locally as West Ash Creek Road and South Wells Road, near BM

4,487 on the Sierra Bonita Ranch map, section 3, T11S/R22E; then

(20) Proceed generally northerly along South Wells Road to BM 4,502, then continuing northerly along the western fork of the road for a total of approximately 7.7 miles to an unnamed light-duty road known locally as Bonita Aravaipa Road, section 27, T9S/R22E; then

(21) Proceed east in a straight line approximately 8.2 miles, crossing onto the Fort Grant map, to the beginning point.

Signed: July 25, 2016.

John J. Manfreda,
Administrator.

Approved: August 22, 2016.

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

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 269

[Docket ID: DOD-2016-OS-0045]

RIN 0790-AJ42

Civil Monetary Penalty Inflation Adjustment

AGENCY: Under Secretary of Defense (Comptroller), Department of Defense.

ACTION: Final rule.

SUMMARY: On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990. The 2015 Act updates the process by which agencies adjust applicable civil monetary penalties (CMP) for inflation to retain the deterrent effect of those penalties. The 2015 Act requires that not later than July 1, 2016, and not later than January 15 of every year thereafter, the head of each agency must, by regulation published in the **Federal Register**, adjust each CMP within its jurisdiction by the inflation adjustment described in the 2015 Act. Accordingly, the Department of Defense must adjust the level of all civil monetary penalties under its jurisdiction through a final rule and make subsequent annual adjustments for inflation.

DATES: This rule is effective September 12, 2016.

FOR FURTHER INFORMATION CONTACT: Brian Banal, 703-571-1652.

SUPPLEMENTARY INFORMATION: On Thursday, May 26, 2016 (81 FR 33389-33391), the Department of Defense published an interim final rule titled “Civil Monetary Penalty Inflation Adjustment” for a 60-day public comment period. The public comment period ended on July 25, 2016. No public comments were received.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust the level of civil monetary penalties through a final rule in the **Federal Register**.

Background Information

The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 104 Stat. 890 (28 U.S.C. 2461, note), as amended by the Debt Collection Improvement Act of 1996, Public Law 104-134, April 26, 1996, and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), Public Law 114-74, November 2, 2015, requires agencies to annually adjust the level of Civil Monetary Penalties (CMP) for inflation to improve their effectiveness and maintain their deterrent effect. The 2015 Act requires that not later than July 1, 2016, and not later than January 15 of every year thereafter, the head of each agency must adjust each CMP within its jurisdiction by the inflation adjustment described in the 2015 Act. The inflation adjustment must be determined by increasing the maximum CMP or the range of minimum and maximum CMPs, as applicable, for each CMP by the cost-of-living adjustment, rounded to the nearest multiple of \$1. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index (CPI) for the month of October preceding the date of the adjustment (January 15), exceeds the CPI for the month of October in the previous calendar year. The initial adjustment to a CMP may not exceed 150 percent of the corresponding level in effect on November 2, 2015.

Any increased penalties will only apply to violations which occur after the date on which the increase takes effect.

Each CMP subject to the jurisdiction of the Department of Defense has been adjusted in accordance with the 2015 Act. In compliance with the 2015 Act, the Department of Defense is amending its CMP penalty amounts.

Executive Summary

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act