

compile statistics on \$1,500-and-under shipments.

Dated: August 10, 1987.

John G. Keane,

Director, Bureau of the Census.

I concur:

Francis A. Keating II,

Assistant Secretary, Department of the Treasury.

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-256; Ref. Notice No. 619]

Ozark Highlands Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has decided to establish a viticultural area in south central Missouri, to be known as "Ozark Highlands." This decision is the result of petition from the Ozark Highland Vintners, an association of seven bonded wineries in the area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising enables winemakers to label wines more precisely and helps consumers to better identify the wines they purchase.

EFFECTIVE DATE: September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW, Washington, DC 20226; (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 provide for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Part 9 of 27 CFR provides for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical

features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Petition

Establishment of the "Ozark Highlands" viticultural area was proposed to ATF in a petition prepared by Mr. Laurence R. Carver of the Carver Wine Cellar, Rolla, Missouri. Mr. Carver submitted the petition on behalf of the Ozark Highland Vintners, an association of seven Missouri wineries, of which the Carver Wine Cellar is one. All seven of the bonded wineries forming the Ozark Highland Vintners are located in the viticultural area. An eighth winery in the area is not a member of that association. The "Ozark Highlands" area includes portions of eleven Missouri counties, namely, Phelps, Maries, Osage, Gasconade, Franklin, Crawford, Texas, Shannon, Dent, Reynolds, and Pulaski. The area contains an estimated 2,000 square miles, within which there are approximately 500 acres planted to winegrapes. (Another 500 acres are in table grapes.) Grapes have been grown in the area since 1898, and commercial winemaking dates from the 1930's. The new viticultural area is located entirely within the boundaries of the approved "Ozark Mountain" viticultural area.

Notice of Proposed Rulemaking

In response to the petition, ATF published a notice of proposed rulemaking, Notice No. 619, in the *Federal Register* on February 9, 1987 (52 FR 4036). That notice proposed establishment of the "Ozark Highlands" viticultural area with boundaries approximately as stated in the petition. The notice also solicited public comment concerning the proposed viticultural area.

Public Comment

In response to the notice of proposed rulemaking, ATF received one public comment. That comment, from Mr. Mario A. Pertici of St. Louis, Missouri, expressed full approval of the "Ozark Highlands" area as proposed in Notice No. 619. Accordingly, this Treasury decision establishes the "Ozark Highlands" viticultural area with the name and boundaries proposed in that notice.

Name of the Area

On occasion, the name "Ozark Highlands" has been used synonymously with "Ozark Mountains" to refer to the entire Ozark region, encompassing most of southern Missouri and northern Arkansas. Examples of

this usage can be seen in *The Geography of the Ozark Highland of Missouri* by Carl O. Sauer, University of Chicago Press, 1920, and *Early History of the Northern Ozarks* by Gerard Schultz, M.A., Midland Printing Company, 1937.

In recent years, however, the name "Ozark Highlands" has developed an additional meaning. Due to the efforts of the Ozark Highland Vintners, this name has come to refer specifically to the more limited area being established as a viticultural area by this Treasury decision. To demonstrate the prevalence of this narrower meaning, the petitioner submitted more than a dozen newspaper clippings and magazine articles relating to wine production in the "Ozark Highlands" area. In each instance, the name "Ozark Highlands" refers to the viticultural area established by this Treasury decision, not to the entire Ozark region.

One such article even included a map, pinpointing the location of the viticultural area within the State of Missouri. The articles were taken from well-known local and national publications, including the *St. Louis Post-Dispatch* and *Wines and Vines*.

Under 27 CFR 4.30(a) and 4.64(a)(1), no wine label or advertisement may be misleading. Notice No. 619, while requesting public comment generally concerning the name of the proposed area, also inquired specifically as to whether the name "Ozark Highlands" would be misleading or confusing, in view of the fact that a viticultural area has already been established in the Ozark region under the name "Ozark Mountain" (T.D. ATF-231, 51 FR 24142). The sole commenter expressed his opinion that "Ozark Highlands" would be the "perfect" name for the area proposed in Notice No. 619.

ATF agrees that the name "Ozark Highlands" will not be misleading, when used in wine labeling and advertising to refer to the area established by this Treasury decision. The evidence indicates that this name will not be likely to confuse a typical consumer of "Ozark Highlands" wines. The broad meaning of "Ozark Highlands" (having reference to the entire Ozark region) seems to be found primarily in geological and geographical treatises; whereas the narrower meaning is found in publications having wide popular distribution (e.g. newspapers), and in contexts relating to wine and viticulture. Moreover, the precise delimitation of "Ozark Mountain" and "Ozark Highlands" in regulations, as separate and distinct viticultural areas, will undoubtedly alleviate any remaining

possibility of confusion. (This is one of the purposes for the establishment of American viticultural areas with boundaries defined by regulation.)

Therefore, ATF believes that the regulatory requirement for evidence supporting the name "Ozark Highlands" has been met, and that the use of this name in wine labeling and advertising will not be misleading.

Geography of the Area

Geographically, the "Ozark Highlands" viticultural area constitutes "the region formed by the undissected northern uplands of the Ozark plateau" (to quote the petition). This region has several distinguishing geographical features, the most striking of which is its topography. Topographically, the new viticultural area consists of an elevated plateau, which is surrounded by highly dissected river and stream valleys. Relative to surrounding areas, therefore, the "Ozark Highlands" are flat. They are also higher in elevation than their immediate surroundings. One effect of this topography on the viticulture of the area has been described by the petitioner as follows:

"The higher elevations are often in the form of flat to rolling 'ridge tops' producing prominent and completely unshaded hilltops that are excellent sites for vineyards." To demonstrate this topographical distinction, the petitioner submitted a map titled "Topography of Missouri," prepared in 1978 by the Geology and Land Survey of the Missouri Department of Natural Resources. This map shows the "Ozark Highlands" area to be "Isolated Rolling Plains," which are surrounded by "Highly Dissected Plateaus." The topographical distinction is also apparent by examination of contour lines of the U.S.G.S. maps on which the area appears. (Those maps are listed in § 9.115, as added by this Treasury decision.)

The "Ozark Highlands" can also be distinguished from surrounding areas by soil. To demonstrate this distinction, the petitioner submitted a publication of the U.S. Department of Agriculture's Soil Conservation Service, entitled *Missouri General Soil Map & Soil Association Descriptions*. This publication shows that the soils of the Lebanon-Hobson-Clarksville series are especially distinctive of the "Ozark Highlands" area. This soil series occurs extensively within the viticultural area, but is found in only a few isolated spots outside of it. Other soils in the area include the Gerald-Union-Goss series and the Hobson-Coulstone-Clarksville series. The latter series occurs to a limited extent within the area, but it becomes

predominant immediately outside of the area. Distinctive soil patterns often reflect distinctive underlying geologic structures. That this is so in the "Ozark Highlands" is demonstrated by a map called "Geologic Map of Missouri," published in 1979 by the Missouri Geological Society. A copy of this map was submitted by the petitioner. It shows that the soil of the proposed viticultural area is predominantly derived from the Roubidoux Formation, with some Smithville Formation and Pennsylvanian Undifferentiated. That pattern contrasts with the Gasconade Dolomite soil in many of the immediately surrounding areas.

Finally, the "Ozark Highlands" are also distinguished from surrounding areas on the basis of climate. The petition states: "These upper portions are relatively frost-free for longer periods of the year. The cooler frost-causing air in the Spring and Fall of the year flows down the hillsides from the higher to the lower elevations, especially into the deeply trenched river valleys. This leaves the . . . Highlands relatively frost free as compared to the lower elevations."

Boundaries of the Area

The natural boundaries of the "Ozark Highlands" viticultural area are extremely convoluted. It would be impossible to define those boundaries precisely and functionally by features that appear on the applicable U.S.G.S. maps. Accordingly, this Treasury decision prescribes boundaries that define the area as closely as practicable on those maps. The boundaries reflect the location of the "Ozark Highlands" on land generally over 1,000 feet in elevation, between a number of major rivers and streams. Those rivers and streams are: The Big Piney, Gasconade, Bourbeuse, Meramec, and Current Rivers, and Jack's Fork. The boundaries include all land associated with the geographical features distinguishing the area, as discussed above under GEOGRAPHY OF THE AREA. See § 9.115, added to regulations by this Treasury decision, for a complete description of the boundaries. These boundaries place the "Ozark Highlands" viticultural area entirely within the approved "Ozark Mountain" viticultural area. In establishing a viticultural area based on geographical features that affect viticultural features, ATF recognizes that the distinctions between a smaller area and its surroundings are more refined than the differences between a larger area and its surroundings. It is possible for a large viticultural area to contain smaller approved viticultural areas, if each area

fulfills the requirements for establishment of a viticultural area.

Miscellaneous

ATF does not want to give the impression by approving "Ozark Highlands" as a viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct but not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage can only come from consumer acceptance of "Ozark Highlands" wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule, because it will not have a significant economic impact on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Further, the final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of Feb. 17, 1981, the Bureau has determined that this final rule is not a major rule, since it will not result in:

- (a) An annual effect on the economy of \$100 million or more;
- (b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or
- (c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule, because no

requirement to collect information is imposed.

Drafting Information

The principal author of this document is Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, Wine.

Issuance

Accordingly, 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph A. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. B. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.115, to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.
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9.115 Ozark Highlands.

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Par. C. Subpart C of 27 CFR Part 9 is amended by adding § 9.115, which reads as follows:

§ 9.115 Ozark Highlands.

(a) *Name.* The name of the viticultural area described in this section is "Ozark Highlands."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Ozark Highlands viticultural area are three U.S.G.S. maps of the 1:250,000 series. They are titled:

- (1) Rolla, Missouri; Illinois, 1954 (revised 1969).
- (2) St. Louis, Missouri; Illinois, 1963 (revised 1969).
- (3) Springfield, Missouri, 1954 (revised 1969).

(c) *Boundary*—(1) *General.* The Ozark Highlands viticultural area is located in south central Missouri. The area comprises portions of the following counties: Phelps, Maries, Osage, Gasconade, Franklin, Crawford, Texas, Shannon, Dent, Reynolds, and Pulaski. The beginning point of the following boundary description is the junction of Little Piney Creek and the Gasconade River, near Jerome, Missouri (in the northwest corner of the Rolla map).

(2) *Boundary Description*—(i) From the beginning point, the boundary goes northward along the Gasconade River to

the latitude line 38°00' (the dividing line between the Rolla and St. Louis maps);

(ii) Then eastward along that latitude line to U.S. Highway 63;

(iii) Then northward along U.S. 63 to Spring Creek;

(iv) Then north-northwestward along Spring Creek to the Gasconade River;

(v) Then northward along the Gasconade River to a power transmission line (less than 1 mile north of Buck Elk Creek);

(vi) Then eastward and east-northeastward along that power transmission line to Missouri Route 19;

(vii) Then southward along Route 19 to the Bourbeuse River;

(viii) Then east-northeastward along the Bourbeuse River to the range line dividing R. 2 W. and R. 1 W.;

(ix) Then southward along that range line to the Meramec River;

(x) Then southwestward along the Meramec River to Huzzah Creek;

(xi) Then southward along Huzzah Creek to Dry Creek (on the Rolla map, where Missouri Route 8 crosses Huzzah Creek);

(xii) Then southward along Dry Creek to Cherry Valley Creek;

(xiii) Then south-southwestward along Cherry Valley Creek to Missouri Route 19;

(xiv) Then southward and southwestward along Route 19 to Crooked Creek;

(xv) Then northwestward along Crooked Creek to the Meramec River;

(xvi) Then southward along the Meramec River to Hutchins Creek;

(xvii) The southeastward along Hutchins Creek to its source near Missouri Route 32, across from the Howes Mill Post Office;

(xviii) Then in a straight line toward the Howes Mill Post Office to Route 32;

(xix) Then eastward along Route 32 to the range line dividing R. 3 W. and R. 2 W.;

(xx) Then southward along that range line to the township line dividing T. 33 N. and T. 32 N.;

(xxi) Then westward along that township line (which coincides, in R. 3 W., with the Reynolds County/Dent County line) to the boundary of Clark National Forest;

(xxii) Then generally southward along that national forest boundary to the Dent County/Shannon County line;

(xxiii) Then westward along that county line to the Current River;

(xxiv) Then southeastward along the Current River to Missouri Route 19;

(xxv) Then southward along Route 19 to Jack's Fork;

(xxvi) Then westward, southwestward and northwestward

along Jack's Fork, taking the North Prong, to its northwesternmost source;

(xxvii) Then in a straight line northwestward to the southeasternmost source of Hog Creek;

(xxviii) Then northwestward along Hog Creek to the Big Piney River (on the Springfield map);

(xxix) Then northward along the Big Piney River to the township line dividing T. 35 N. and T. 36 N.;

(xxx) Then eastward along that township line to Little Piney Creek (on the Rolla map);

(xxxii) Then northward and westward along Little Piney Creek to the beginning point.

Signed: August 10, 1987.

W. T. Drake,
Acting Director.

Approved: August 13, 1987.

John P. Simpson,
Deputy Assistant Secretary, (Regulatory, Trade, and Tariff Enforcement).

[FR Doc. 87-19790 Filed 8-28-87; 8:45 am]

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DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 9

[Order No. 1210-87]

Revision of Regulations Governing the Remission or Mitigation of Civil and Criminal Forfeitures

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order revises the regulations applicable to the handling of petitions for remission or mitigation of forfeitures by the Criminal Division, the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, and the United States Marshals Service. It consolidates and clarifies the standards and procedures used in handling such petitions in judicial and administrative forfeitures, and it incorporates the use of the recently established Department of Justice Assets Forfeiture Fund as the repository for amounts realized from forfeitures under statutes enforced or administered by the Department of Justice. This revision also will permit payment of post-seizure interest to innocent petitioners holding liens on property forfeited, and, under certain limited circumstances, will permit payments to innocent general creditors whose debts relate to property forfeited.