

Examples. The following example illustrates the principles of this section:

Example (1). Assume Corporation M, an S corporation, has for its taxable year total gross receipts of \$200,000, passive investment income of \$100,000, \$60,000 of which is interest income, and expenses directly connected with the production of such interest income in the amount of \$10,000. Assume also that at the end of the taxable year Corporation M has Subchapter C earnings and profits. Since more than 25 percent of the Corporation M's total gross receipts are passive investment income, and since Corporation M has Subchapter C earnings and profits at the end of the taxable year, Corporation M will be subject to the tax imposed by section 1375. The amount of excess net passive investment income is \$45,000 ($\$90,000 \times (50,000/100,000)$). Assume that the other \$40,000 of passive investment income is attributable to net capital gain and that there are no expenses directly connected with such gain. Under these facts, \$20,000 of the excess net passive income is attributable to the net capital gain ($\$45,000 \times (\$40,000/\$90,000)$). Accordingly, the amount of gain taken into account under section 1374(b)(1) and the taxable income of Corporation M under section 1374(b)(2) shall be reduced by \$20,000.

PART 602—[AMENDED]

Par. 4. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 5. Section 602.101(c) is amended by inserting in the appropriate place in the table

"§ 1.1374-1A (d) ... 1545-0130".

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: September 3, 1986.

J. Roger Mentz,
Assistant Secretary of the Treasury.
[FR Doc. 86-21723 Filed 9-25-86; 8:45 am]
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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. AFT-235; Ref. Notice No. 588]

Establishment of Arkansas Mountain 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 the State of Arkansas to be known as "Arkansas Mountain." This decision is the result of a petition submitted by Mr. Al Wiederkehr, a winery owner and grape grower 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: October 27, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 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

ATF received a petition from Mr. Al Wiederkehr, Chairman of the Board and Chief Executive Officer of Wiederkehr Wine Cellars, Inc., proposing an area in northwestern Arkansas as a viticultural area to be known as "Arkansas Mountain." The area contains about 4,500 square miles. Within the area, approximately 1,200 acres are currently planted to grapes. The area is located in the mountainous region of Arkansas, both north and south of the Arkansas River. There are six bonded wineries or bonded wine cellars authorized to operate within the area.

Notice of Proposed Rulemaking

In response to the petition, ATF published a notice of proposed rulemaking, Notice No. 588, in the *Federal Register* on Monday, April 7, 1986 (51 FR 11753). That notice proposed establishment of the "Arkansas Mountain" viticultural area and solicited public comment concerning the proposal.

No comments have been received. Therefore, this document establishes the "Arkansas Mountain" viticultural area with boundaries as proposed in Notice No. 588.

Name of the Area

The following evidence, submitted by the petitioner, establishes that the new viticultural area is known by the name of "Arkansas Mountain":

(a) The name "Arkansas Mountain" has been used on wine labels by the petitioner to designate wines from this area since 1974.

(b) Published descriptions of the area have referred to it as the "Arkansas Mountains." For example, the "Holiday Inn Magazine for Travelers," in an October 1969 article entitled "Vineyard Village," stated: "Finding the grape-laden vineyards, a colorful chalet with gay window boxes, and huge wine cellars in the Arkansas mountains is an unexpected adventure to most tourists. Yet the colony has been there for more than 80 years." Further, the Rev. Placidus Oechsle, in his *Historical Sketch of the Congregation of Our Lady of Perpetual Help* (1930), wrote as follows: "The Baron . . . praised the thrifty and industrious settlers of Teutonic blood, who had made in a few years a garden spot of a wilderness. They had selected the Arkansas Mountains . . . to become their home."

(c) The origin of the term "Arkansas Mountain" was described by the petitioner as follows: "Dr. John L. Ferguson states the following information in reference to the Arkansas Mountains. The name Arkansas came before Ozark or 'Aux Arcs' which means of the Arkansas or from among the Arkansas. The name Arkansas comes from the Arkansas Indians who lived in the area. The Arkansas River was given its name to indicate that it was the river of the Arkansas (Indians); therefore the Arkansas River. The mountains in the vicinity of the Arkansas River were also given that name to mean also the mountains of the Arkansas (Indians); therefore the Arkansas Mountains."

Geography of the Area

The following evidence establishes that the new viticultural area is distinguished geographically from its surrounding areas:

(a) To the north and west, the area is distinguished from neighboring areas on the basis of mean winter minimum temperature. The petitioner submitted data collected over 50 years from 42 locations (7 inside the area and 35 outside of it). The data showed that

locations to the north and west of the area regularly experience significantly colder mean winter minimum temperatures. According to Professor Justin R. Morris of the University of Arkansas Division of Agriculture, this distinction "is due to the effects of the mountains." The protective effects of the Arkansas mountains were described by the petitioner, quoting at length from *Natural Resources of the State of Arkansas* (1869) by James M. Lewis. In that book, Mr. Lewis claimed that protection from cold northern weather is due to the fact that the Ozark and Ouachita Mountains range east and west, rather than north and south (as within the Appalachians, for example). Consequently, Mr. Lewis said, the mountains provide shelter from violent winds and sudden changes in temperature coming from the north.

(b) To the east, the data is ambiguous as to the existence of a temperature difference as described above. However, the eastern boundary does correspond approximately to a topographical change, where the Boston and Ouachita Mountains begin their descent to the alluvial plain of the Mississippi River. This topographical change is reflected in a change in the character of the soil; for instance, the Leadville-Taft soils begin to occur much more frequently; and, within the Linker and Mountainburg soils, there is an increasing predominance of the Linker variety and a corresponding drop-off in the Mountainburg.

(c) To the south, the boundary of the area delineates the extent of "soil types suitable for grape production" (according to Professor Morris). Additionally, Professor Morris stated, "All areas south of the Arkansas Mountain area would be considered in the Pierce's disease region and in these areas, the *Vitis rotundifolia* are best adapted since they are resistant or tolerant to Pierce's disease." Pierce's disease is a vine-destroying disease, associated with warm climates, which attacks vines of the *Vitis vinifera* species (the species from which most of the world's wines are produced). *Vitis vinifera* is grown in the Arkansas Mountain area, but has not been grown successfully in the region to the south of it.

Boundaries of the Area

The boundaries of the new viticultural area are found on two U.S.G.S maps in the scale of 1:250,000, titled Russellville, Arkansas, and Fort Smith, Arkansas-Oklahoma. The boundaries are as described in new § 9.112, which is added to regulations by this Treasury decision.

The "Arkansas Mountain" boundaries entirely enclose the approved "Altus" viticultural area. Further, the "Arkansas Mountain" area is itself entirely enclosed within the approved "Ozark Mountain" area. In establishing a viticultural area based on geographical features which 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 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 "Arkansas Mountain" 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 "Arkansas Mountain" 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, 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.

List of Subjects in 27 CFR Part 9

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

Drafting Information

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

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 revised to add the title of § 9.112, to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.	* * * * *
9.112	Arkansas Mountain.
	* * * * *

Par. C. Subpart C of 27 CFR Part 9 is amended by adding § 9.112, which reads as follows:

§ 9.112 Arkansas Mountain.

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

(b) *Approved maps.* The appropriate maps for determining the boundary of the Arkansas Mountain viticultural area are two U.S.G.S. maps, titled:

- (1) Russellville, Arkansas, 1:250,000 series compiled in 1954.
- (2) Fort Smith, Arkansas-Oklahoma, 1:250,000 series, 1978.

(c) *Boundary—(1) General.* The Arkansas Mountain viticultural area is located in northwestern Arkansas. Starting at the point where Frog Bayou converges with the Arkansas River, near

Yoestown, Arkansas (or the Fort Smith map), the boundary proceeds:

- (2) *Boundary Description.* (i) Southwestward along the Arkansas River to Vache Grasse Creek.
- (ii) Then southeastward and southwestward following Vache Grasse Creek to the place where it is crossed by Arkansas Highway 10, near Greenwood, Arkansas.
- (iii) From there westward along Highway 10 to U.S. Highway 71. (Note: Highway 10 is the primary highway leading to Greenwood to Hackett, Arkansas.)
- (iv) Then southward and eastward along Highway 71 until it crosses Rock Creek.
- (v) Then northeastward along Rock Creek to Petit Jean Creek.
- (vi) Then generally northeastward and eastward along Petit Jean Creek until it becomes the Petit Jean River (on the Russellville map).
- (vii) Then generally eastward along the Petit Jean River, flowing through Blue Mountain Lake, until the Petit Jean River joins the Arkansas River.
- (viii) Then generally eastward along the Arkansas River to Cadron Creek.
- (ix) Then generally northward and northeastward along Cadron Creek to the place where it is crossed by U.S. Highway 65.
- (x) From there northward along Highway 65 to its intersection with Arkansas Highway 16 near Clinton, Arkansas.
- (xi) From there following Highway 16 generally westward to its intersection with Arkansas Highway 23 in Brashears, Arkansas.
- (xii) From there southward along Highway 23 to the Madison County-Franklin County line.
- (xiii) Then westward and southward along that county line to the Madison County-Crawford County line.
- (xiv) Then westward along that county line to the Washington County-Crawford County line.
- (xv) Then westward along that county line to Jones Fork (on the Fort Smith map).
- (xvi) Then southward along Jones Fork until it joins Frog Bayou near Winfrey, Arkansas.
- (xvii) Then generally southward along Frog Bayou, flowing through Lake Shepherd Springs and Lake Fort Smith, to the starting point.

Signed: August 15, 1986.

Stephen E. Higgins,
Director.

Approved: September 8, 1986.

Michael H. Lane,
Deputy Assistant Secretary (Regulatory,
Trade, and Tariff Enforcement)
[FR Doc. 86-21850 Filed 9-25-86; 8:45 am]
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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-020]

Indiana State Plan; Final Approval Determination

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Final State plan approval.

SUMMARY: This document amends Subpart Z of 29 CFR Part 1952 to reflect the Assistant Secretary's decision granting final approval to the Indiana State plan. As a result of this affirmative determination under section 18(e) of the Occupational Safety and Health Act of 1970, Federal OSHA standards and enforcement authority no longer apply to occupational safety and health issues covered by the Indiana plan, and authority for Federal concurrent jurisdiction is relinquished. Federal enforcement jurisdiction is retained over maritime employment in the private sector and private-sector hazardous-waste disposal facilities designated as Superfund sites. Federal jurisdiction remains in effect with respect to Federal Government employers and employees.

EFFECTIVE DATE: September 26, 1986.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Introduction

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act") provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Procedures for State plan

submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and 1902.4, finds that the plan provides or will provide for State standards and enforcement which are "at least as effective" as Federal standards and enforcement, initial approval is granted.

A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in 29 CFR 1902.3 and 1902.4 if it includes satisfactory assurances by the State that it will take the necessary "developmental steps" to meet the criteria within a 3-year period. 29 CFR 1902.2(b). The Assistant Secretary publishes a notice of "certification of completion of developmental steps" when all of a State's developmental commitments have been satisfactorily met. 29 CFR 1902.34.

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an "operational status agreement" with OSHA. 29 CFR 1954.3(f). A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of a least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3, 1902.4 and 1902.37 are being applied. An affirmative determination under section 18(e) of the Act (usually referred to as "final approval" of the State plan) results in the relinquishment of authority for Federal concurrent jurisdiction in the State with respect to occupational safety and health issues