

Executive Order 12866. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this document.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend 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. Add § 9, ____ to read as follows:

§ 9. ____ The Burn of Columbia Valley.

(a) *Name.* The name of the viticultural area described in this section is “The Burn of Columbia Valley”. For purposes of part 4 of this chapter, “The Burn of Columbia Valley” is a term of viticultural significance.

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

- (1) Sundale NW, OR–WA, 2017;
- (2) Goodnoe Hills, WA, 2017;
- (3) Dot, WA, 2017; and
- (4) Sundale, WA–OR, 2017.

(c) *Boundary.* The Burn of Columbia Valley viticultural area is located in Klickitat County in Washington. The boundary of The Burn of Columbia Valley viticultural area is as described below:

(1) The beginning point is on the Sundale NW map, at the intersection of the Columbia River and the east shore of Paterson Slough. From the beginning point, proceed northerly along the east shore of Paterson Slough to its junction with Rock Creek, and continuing northeasterly along Rock Creek to its intersection with the boundary of the Yakima Nation Trust Land; then

(2) Proceed south, then east, then generally northeasterly along the boundary of the Yakima Nation Trust Land, crossing onto the Goodnoe Hills map, to the intersection of the Trust Land boundary with Kelley Road; then

(3) Proceed north in a straight line to the intersection with the main channel of Chapman Creek; then

(4) Proceed southeasterly (downstream) along Chapman Creek, crossing over the Dot map and onto the Sundale map, to the intersection of Chapman Creek with its southernmost tributary; then

(5) Proceed due east in a straight line to the creek running through Old Lady Canyon; then

(6) Proceed southerly along the creek to its intersection with the northern shoreline of the Columbia River; then

(7) Proceed westerly along the northern shoreline of the Columbia River, returning to the beginning point.

Signed: March 31, 2020.

Mary G. Ryan,

Acting Administrator.

Approved: May 13, 2020.

Timothy E. Skud,

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

[FR Doc. 2020–10921 Filed 5–26–20; 8:45 am]

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2020–0004; Notice No. 189]

RIN 1513–AC57

Proposed Establishment of the White Bluffs Viticultural Area

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the 93,738-acre “White Bluffs” viticultural area in Franklin County, Washington. The proposed AVA is located entirely within the existing Columbia Valley AVA. 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. TTB invites comments on these proposals.

DATES: TTB must receive your comments on or before July 27, 2020.

ADDRESSES: You may electronically submit comments to TTB on this proposal, and view copies of this document, its supporting materials, and any comments TTB receives on it within Docket No. TTB–2020–0004 as posted on *Regulations.gov* (<https://www.regulations.gov>), the Federal e-rulemaking portal. Please see the “Public Participation” section of this

document below for full details on how to comment on this proposal via *Regulations.gov*, U.S. mail, or hand delivery, and for full details on how to view or obtain copies of this document, its supporting materials, and any comments related to this proposal.

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 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 provisions.

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 its 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 that affect 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;
- An explanation showing the proposed AVA is sufficiently distinct from an existing AVA so as to warrant separate recognition, if the proposed AVA is to be established within, or overlapping, an existing AVA; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Petition To Establish the White Bluffs AVA

TTB received a petition from Kevin Pogue, a college geology professor, proposing to establish the “White Bluffs” AVA. The petition was submitted on behalf of local vineyard owners and winemakers. The proposed AVA is located in Franklin County, Washington, and is entirely within the existing Columbia Valley AVA (27 CFR 9.74). Within the 93,738-acre proposed AVA, there are 9 commercial vineyards, covering a total of approximately 1,127 acres, along with 1 winery. The distinguishing features of the proposed

White Bluffs AVA are its topography, geology, soils, and climate.

Proposed White Bluffs AVA

Name Evidence

The proposed White Bluffs AVA takes its name from a steep escarpment that lies along the eastern bank of the Columbia River and forms the western boundary of the proposed AVA. An early reference to the region can be found in an 1893 U.S. Geological Survey bulletin, which states, “The White bluffs [sic] afford favorable ground for collecting fossil bones * * *.”¹ A 1917 geological bulletin titled “Age of the strata referred to as Ellensburg formation in the White Bluffs of the Columbia River” notes, “The White Bluffs follow the river closely from a point ten or twelve miles north of Pasco to the northwestward for about thirty miles.”² A more recent geological publication states, “The White Bluffs line the north and east sides of the Columbia River for about 30 miles along the Hanford Reach near Richland.”³

The petition also included examples of use of the term “White Bluffs” by businesses and organizations within or serving the proposed AVA. For example, the White Bluffs Quilt Museum, which is in Richland, Washington, describes itself as “a Regional Textile Arts Center, serving the Tri-Cities and the Mid-Columbia Basin,” which includes the region of the proposed AVA. Clear Cellars Winery, which is located within the proposed AVA, has a vineyard called White Bluffs Vineyard. The website of the Washington State Wine Commission states that both the White Bluffs Vineyard and Clear Cellars Winery are located “north of Pasco, WA in the White Bluffs area of the Columbia Valley Appellation.”⁴ Finally, the petition notes that an endangered plant that grows primarily within and around the proposed AVA is named the White Bluffs bladderpod.⁵

Boundary Evidence

The proposed White Bluffs AVA is located in the central portion of the

¹ Russell, I.C., A geological reconnaissance in central Washington: U.S. Geological Survey Bulletin, p. 108 (1893).

² Merriam, J.C., and Buwalda, J.P., Age of the strata referred to as Ellensburg formation in the White Bluffs of the Columbia River: University of California Publications Bulletin of the Department of Geology, v. 10, p. 255–266 (1917).

³ Bjornstad, B., On the trail of the Ice Age floods, a geological guide to the Mid-Columbia Basin: Koeke Books, Sandpoint, ID, p.308 (2006).

⁴ <https://www.washingtonwine.org/vineyards/white-bluffs-vineyard>.

⁵ <https://ecos.fws.gov/ecp0/profile/speciesProfile?slid=5390>.

established Columbia Valley AVA along the eastern bank of the Columbia River and is shaped roughly like a mitten with the “thumb” pointing east. The proposed boundaries encompass a plateau upon which the proposed AVA is located. The northern, eastern, and southern boundaries each primarily follow elevation contours that approximate the escarpments that form the edges of the plateau. The western boundary separates the proposed AVA from the Hanford Reach National Monument and is formed by the east bank of the Columbia River and the boundary of the monument.

Distinguishing Features

According to the petition, the distinguishing features of the proposed White Bluffs AVA are its topography, geology, soils, and climate.

Topography

The proposed White Bluffs AVA is located on a broad plateau that rises, on average, 200 feet above the surrounding landscape. The Ringold and Koontz coulees divide the plateau into two distinct areas that are capped by flat surfaces known as Columbia Flat and Owens Flat. The surface of the plateau is described as being “remarkably even, excepting where interrupted by occasional drainage courses that have cut below its level.”⁶ Elevations within the proposed AVA range from 700 feet in the coulees to approximately 1,200 feet in the northeastern section. The majority of the proposed AVA has elevations between 800 and 1,000 feet.

By contrast, the surrounding regions are generally characterized by lower elevations. To the immediate north, the elevations drop slightly along the Wahluke Slope Habitat Management Area before rising into the Saddle Mountains. To the east, elevations slope downward into the Esquatzel Coulee. To the south, elevations descend into the Pasco Basin. To the west, elevations slope down to the Columbia River.

According to the petition, the topography of the proposed AVA has an effect on viticulture. The plateau’s escarpments provide gently sloping vineyard sites with a southern aspect absorb more solar energy per unit area than other sites, which helps warm the soil and promote an earlier onset of bud break, flowering, veraison, and harvest. Additionally, vineyards planted on the plateau are above colder air that pools

⁶ Merriam, J.C., and Buwalda, J.P., 1917, Age of the strata referred to as Ellensburg formation in the White Bluffs of the Columbia River: University of California Publications Bulletin of the Department of Geology, v. 10, p. 255–266.

on the floor of the surrounding lower elevations at night. Vineyards above the pooling cold air have a longer growing season and are at less risk of damage from late spring and early fall frost and freeze events.

Geology

The proposed White Bluffs AVA is underlain by a thick layer of sedimentary rocks called the Ringold Formation. The sediments that comprise the Ringold Formation were deposited in lakes and rivers between 8.5 and 3.4 million years ago. The upper part of the Ringold Formation contains an erosion-resistant mineralized layer commonly referred to as caliche. This layer reaches depths of at least 15 feet and limits root penetration and soil water holding capacity. As a result, areas with thick layers of caliche routinely undergo deep ripping with bulldozers to break up the caliche before vineyards can be planted. The Ringold Formation overlies Columbia River basalt.

The underlying rock formations of the regions surrounding the proposed White Bluffs AVA also consist of Columbia River basalt. However, the Ringold Formation is generally much thinner or

entirely absent in the surrounding regions, leaving the Columbia River basalt exposed. Unlike vines planted in the proposed AVA, vines planted in the surrounding region are able to encounter the basalt bedrock and are therefore exposed to a suite of very different minerals, including olivine and plagioclase feldspar.

Soils

The soils of the proposed White Bluffs AVA are developed in wind-deposited silt and fine sand overlying sediment deposited by ice-age floods, which in turn overlies the Ringold Formation. Most of the ice-age flood sediment deposited within the proposed AVA is a mixture of silt and sand that settled out of suspension in glacial Lake Lewis. The maximum elevation of Lake Lewis was approximately 1,250 feet, and thus the entire proposed AVA was submerged. The thickness of the flood sediment gradually increases with decreasing elevation, since there were multiple ice-age floods of varying intensity and lower elevations were flooded more frequently. Thus, the soil depths of the regions surrounding the proposed AVA are likely to be thicker

due to their lower elevations. Additionally, the soils surrounding the proposed AVA are much more likely to consist of coarse-grained gravel rather than fine sand and silt, since they were deposited by fast-flowing flood currents instead of by wind.

Because of the thinness of the soils of the proposed AVA, the roots of grapevines are able to reach the Ringold Formation, which has a high clay content. High clay content allows the soils to release water more slowly than sandier soils, allowing vines to be less stressed during dry conditions.

Climate

According to the petition, the cooler nighttime air flows away from the upper surface of the plateau of the proposed White Bluffs AVA and into the surrounding lower elevations. As a result, the proposed AVA has a longer growing season, which is characterized by an earlier last-frost date and later first-frost date than the surrounding regions. The following table summarizes the climate data provided in the petition. Data was not available for the region to the west, within the Hanford Reach National Monument.

TABLE—CLIMATE DATA OF THE PROPOSED AVA AND SURROUNDING REGIONS⁷

| Weather station (direction from proposed AVA) | Average last-frost date | Average first-frost date | Average growing season length in days |
|--|-------------------------|--------------------------|---|
| Pasco North (within) | March 21 | November 8 | 229 |
| KWAELTOP3 (within) | March 15 | November 16 | 246 |
| Radar Hill (north) | April 15 | October 29 | 196 |
| Basin City (north) | April 4 | October 28 | 204 |
| Connell Bench (northeast) | May 2 | October 15 | 164 |
| Mesa SE (east) | April 26 | October 14 | 169 |
| Juniper (southeast) | April 19 | October 17 | 181 |
| Tri-Cities (south) | April 17 | October 25 | 191 |

The petition illustrates that the early last-frost dates mean that the proposed White Bluffs AVA is less prone to spring frosts that can damage the vines after bud break than the surrounding regions. Additionally, a later first-frost date means that the proposed AVA is less likely to experience fall frosts that halt the ripening process and delay harvest.

Summary of Distinguishing Features

The proposed White Bluffs AVA is located on a large plateau that rises, on average, 200 feet above the surrounding regions. The geology is characterized by a thick layer of clay, silt, sand, and gravel called the Ringold Formation,

which overlies Columbia River basalt. Soils in the proposed AVA are comprised of thin layers of wind-deposited silt and fine sand overlying sediment deposited by ice-age floods. The proposed AVA has a long growing season of between 229 and 246 days, with an average last-frost date in mid-March and an average first-frost date in early-to-mid November.

By contrast, the surrounding regions are at lower elevations than the proposed AVA. As a result, the soils are thicker and are likely to have more coarse-grained gravel because those regions were more frequently covered by ice-age flooding. The geology of the surrounding regions features Columbia River basalt, but the Ringold Formation is either significantly thinner than within the proposed AVA or it is

entirely absent. Finally, the surrounding regions have significantly shorter growing seasons, with later last-frost dates and earlier first-frost dates.

Comparison of the Proposed White Bluffs AVA to the Existing Columbia Valley AVA

T.D. ATF-190, published in the **Federal Register** on November 13, 1984 (49 FR 44895), established the Columbia Valley AVA. It describes the Columbia Valley AVA as a large, treeless basin surrounding the Yakima, Snake, and Columbia Rivers. Growing season lengths within the Columbia Valley AVA are over 150 days, and annual precipitation amounts are less than 15 inches. Elevations within the Columbia Valley AVA are below 2,000 feet.

The proposed White Bluffs AVA shares some of the general viticultural

⁷ Data from Pasco, Pasco North, Radar Hill, Juniper, Mesa SE, Connell Bench, Basin City, and Tri-Cities weather stations were collected from 2008–2016. Data from the KWAELTOP3 station was only available from 2014–2016.

features of the larger Columbia Valley AVA. For instance, the proposed AVA has elevations below 2,000 feet and both have geologies that consist of Columbia River basalt. The petition states that the proposed AVA also has annual precipitation amounts of less than 15 inches, although no data was provided to support this claim.

The proposed AVA, however, also has characteristics that distinguish it from the larger Columbia Valley AVA. Most notably, the proposed AVA is an elevated plateau, rather than a broad plain. Although the elevations within the proposed AVA are within the range of elevations found within the Columbia Valley AVA, the proposed AVA's elevations are significantly higher than those of the immediately surrounding regions. Finally, due to the higher elevations, soil depths within the proposed White Bluffs AVA are shallower than the soil depths found within the majority of the Columbia Valley AVA, which was more frequently inundated by ice-age floods.

TTB Determination

TTB concludes that the petition to establish the 93,738-acre "White Bluffs" AVA merits consideration and public comment, as invited in this document.

Boundary Description

See the narrative boundary descriptions of the petitioned-for AVA in the proposed regulatory text published at the end of this document.

Maps

The petitioner provided the required maps, and they are listed below in the proposed regulatory text. You may also view the proposed White Bluffs AVA boundary on the AVA Map Explorer on the TTB website, at <https://www.ttb.gov/wine/ava-map-explorer>.

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.

If TTB establishes this proposed AVA, its name, "White Bluffs," 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 proposed regulation clarifies this point. Consequently, wine bottlers using "White Bluffs" in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin if this proposed rule is adopted as a final rule. If approved, the establishment of the proposed White Bluffs AVA would allow vintners to use "White Bluffs" or "Columbia Valley" as appellations of origin for wines made from grapes grown within the proposed AVA, if the wines meet the eligibility requirements for the appellation.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether TTB should establish the proposed White Bluffs AVA. TTB is interested in receiving comments on the sufficiency and accuracy of the name, boundary, topography, and other required information submitted in support of the AVA petition. In addition, because the proposed White Bluffs AVA would be within the existing Columbia Valley AVA, TTB is interested in comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the existing AVA. TTB is also interested in comments on whether the geographic features of the proposed AVA are so distinguishable from the Columbia Valley AVA that the proposed White Bluffs AVA should not be part of the established AVA. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed White Bluffs AVA on wine labels that include the term "White Bluffs" as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area names and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe

the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the proposed AVA.

Submitting Comments

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

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this document within Docket No. TTB-2020-0004 on "*Regulations.gov*," the Federal e-rulemaking portal, at <https://www.regulations.gov>. A direct link to that docket is available under Notice No. 189 on the TTB website at <https://www.ttb.gov/wine/wine-rulemaking.shtml>. Supplemental files may be attached to comments submitted via *Regulations.gov*. For complete instructions on how to use *Regulations.gov*, visit the site and click on the "Help" tab at the top of the page.

- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW, Box 12, Washington, DC 20005.

- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this document. Your comments must reference Notice No. 189 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

Your comment must clearly state if you are commenting on your own behalf or on behalf of an organization, business, or other entity. If you are commenting on behalf of an organization, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via *Regulations.gov*, please enter the entity's name in the "Organization" blank of the online comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this document, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB–2020–0004 on the Federal e-rulemaking portal, *Regulations.gov*, at <https://www.regulations.gov>. A direct link to that docket is available on the TTB website at <https://www.ttb.gov/wine/wine-rulemaking.shtml> under Notice No. 189. You may also reach the relevant docket through the *Regulations.gov* search page at <https://www.regulations.gov>. For instructions on how to use *Regulations.gov*, visit the site and click on the “Help” tab.

All posted comments will display the commenter’s name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that it considers unsuitable for posting.

You also may view copies of this document, all related petitions, maps and other supporting materials, and any electronic or mailed comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW, Suite 400, Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact TTB’s Regulations and Rulings Division at the above address, by email at https://www.ttb.gov/webforms/contact_RRD.shtml, or by telephone at 202–453–1039, ext. 175, to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area 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

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this document.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend 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. Add § 9.____ to read as follows:

§ 9.____ White Bluffs.

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

(b) *Approved maps.* The 10 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the viticultural area are titled:

- (1) Hanford, NE, Washington, 1986;
- (2) Mesa West, Washington, 1986;
- (3) Wooded Island, Washington, 1992;
- (4) Matthews Corner, Washington, 1992;
- (5) Basin City, Washington, 1986;
- (6) Eltopia, Washington, 1992;
- (7) Eagle Lakes, Washington, 1986;
- (8) Savage Island, Washington, 1986;
- (9) Richland, Washington, 1992; and
- (10) Columbia Point, Washington, 1992.

(c) *Boundary.* The White Bluffs viticultural area is located in Franklin County in Washington. The boundary of the White Bluffs viticultural area is as described below:

(1) The beginning point is on the Richland map at the intersection of Columbia River Road and an unnamed secondary highway known locally as Sagemoor Road. From the beginning

point, proceed north along Columbia River Road, crossing onto the Wooded Island map, to the Potholes Canal; then

(2) Proceed west along the Potholes Canal for 150 feet to its intersection with the shoreline of the Columbia River; then

(3) Proceed north along the Columbia River shoreline, crossing onto the Savage Island map, to the intersection of the shoreline with the Wahluke Slope Habitat Management boundary on Ringold Flat; then

(4) Proceed east, then generally northwesterly, along the Wahluke Slope Habitat Management boundary to its intersection with the 950-foot elevation contour along the western boundary of section 16, T13N/R29E; then

(5) Proceed easterly, then generally northeasterly, along the 950-foot elevation contour, passing over the Hanford NE map and onto the Eagle Lakes map, to the intersection of the elevation contour with an unimproved road in the southeast corner of section 32, T14N/T29E; then

(6) Proceed east along the unimproved road for 100 feet to its intersection with an unnamed light-duty improved road known locally as Albany Road; then

(7) Proceed south along Albany Road, crossing onto the Basin City map, to the road’s intersection with an unnamed improved light-duty road known locally as Basin Hill Road along the southern boundary of section 21, T13N/R29E; then

(8) Proceed south in a straight line for 2 miles to an improved light-duty road known locally as W. Klamath Road; then

(9) Proceed east along W. Klamath Road, crossing onto the Mesa West map, to the road’s intersection with another improved light-duty road known locally as Drummond Road; then

(10) Proceed north along Drummond Road for 0.75 mile to its intersection with a railroad; then

(11) Proceed easterly along the railroad to its intersection with an improved light-duty road known locally as Langford Road in the northeastern corner of section 4, T12N/R30E; then

(12) Proceed south along Langford Road for 0.5 mile to its intersection with the 800-foot elevation contour; then

(13) Proceed southwesterly along the 800-foot elevation contour, crossing onto the Eltopia map, to the contour’s intersection with Eltopia West Road; then

(14) Proceed east along Eltopia West Road to its intersection with the 700-foot elevation contour; then

(15) Proceed southerly, then northerly along the 700-foot elevation contour, circling Jackass Mountain, to the

contour's intersection with Dogwood Road; then

(16) Proceed west along Dogwood Road for 1.1 mile, crossing onto the Matthews Corner map, to the road's intersection with the 750-foot elevation contour; then

(17) Proceed southwesterly along the 750-foot elevation contour to its intersection with Taylor Flats Road; then

(18) Proceed south along Taylor Flats Road, crossing onto the Columbia Point map, to the road's intersection with Birch Road; then

(19) Proceed west along Birch Road for 1 mile to its intersection with Alder Road; then

(20) Proceed south along Alder Road for 0.7 mile to its intersection with the 550-foot elevation contour; then

(21) Proceed westerly along the 550-foot elevation contour to its intersection with Sagemoor Road; then

(22) Proceed westerly along Sagemoor Road for 0.7 mile, crossing onto the Richland map and returning to the beginning point.

Signed: March 4, 2020.

Mary G. Ryan,

Acting Administrator.

Approved: May 13, 2020.

Timothy E. Skud,

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

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DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 42

[Docket No. PTO-P-2019-0024]

RIN 0651-AD40

PTAB Rules of Practice for Instituting on All Challenged Patent Claims and All Grounds and Eliminating the Presumption at Institution Favoring Petitioner as to Testimonial Evidence

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office ("USPTO" or "Office") proposes changes to the rules of practice for instituting review on all challenged claims or none in *inter partes* review ("IPR"), post-grant review ("PGR"), and the transitional program for covered business method patents

("CBM") proceedings before the Patent Trial and Appeal Board ("PTAB" or "Board") in accordance with *SAS Institute Inc. v. Iancu* ("SAS"). Consistent with *SAS*, the Office also proposes changes to the rules of practice for instituting a review on all grounds of unpatentability for the challenged claims that are asserted in a petition. Additionally, the Office proposes changes to the rules to conform to the current standard practice of providing sur-replies to principal briefs and providing that a patent owner response and reply may respond to a decision on institution. The Office further proposes a change to eliminate the presumption that a genuine issue of material fact created by the patent owner's testimonial evidence filed with a preliminary response will be viewed in the light most favorable to the petitioner for purposes of deciding whether to institute a review.

DATES: Comment Deadline Date: The Office solicits comments from the public on this proposed rulemaking. Written comments must be received on or before June 26, 2020 to ensure consideration.

ADDRESSES: Comments should be sent by email addressed to: PTABNPRM2020@uspto.gov.

Comments may also be sent via the Federal eRulemaking Portal at <http://www.regulations.gov>. See the Federal eRulemaking Portal website for additional instructions on providing comments via the Federal eRulemaking Portal. All comments submitted directly to the USPTO or provided on the Federal eRulemaking Portal should include the docket number (PTO-P-2019-0024).

Comments may also be submitted by postal mail addressed to: Mail Stop Patent Board, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, marked to the attention of Michael Tierney, Vice Chief Administrative Patent Judge.

Although comments may be submitted by postal mail, the Office prefers to receive comments by email to more easily share all comments with the public. The Office prefers the comments to be submitted in plain text but also accepts comments submitted in searchable ADOBE® portable document format (PDF) or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that accommodates digital scanning into ADOBE® PDF.

The comments will be available for public inspection at the Patent Trial and Appeal Board, located in Madison East,

Ninth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's website, <https://go.usa.gov/xXXFW>, and on the Federal eRulemaking Portal. Because comments will be made available for public inspection, information that the submitter does not desire to be made public, such as an address or phone number, should not be included.

FOR FURTHER INFORMATION CONTACT: Michael Tierney, Vice Chief Administrative Patent Judge, by telephone at (571) 272-9797.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose: The proposed rules would amend the rules of practice for IPR, PGR, and CBM proceedings that implemented provisions of the Leahy-Smith America Invents Act ("AIA") providing for trials before the Office.

The U.S. Supreme Court held in *SAS* that a decision to institute an IPR under 35 U.S.C. 314 may not institute on fewer than all claims challenged in a petition. See *SAS Institute Inc. v. Iancu*, 138 S. Ct. 1348 (2018). The Court held that the Office only has the discretion to institute on all of the claims challenged in the petition or to deny the petition. Previously, the Board exercised discretion to institute an IPR, PGR, or CBM on all or some of the challenged claims and on all or some of the grounds of unpatentability asserted in a petition. For example, the Board exercised discretion to authorize a review to proceed on only those claims and grounds for which the required threshold had been met, thus narrowing the issues for efficiency in conducting a proceeding.

In light of *SAS*, the Office provided guidance that, if the Board institutes a trial under 35 U.S.C. 314 or 324, the Board will institute on all claims and all grounds included in a petition of an IPR, PGR, or CBM. To implement this practice in the regulation, the first proposed change would amend the rules of practice for instituting an IPR, PGR, or CBM to require institution on all challenged claims (and all of the grounds) presented in a petition or on none. Under the amended rule, in all pending IPR, PGR, and CBM proceedings before the Office, the Board would either institute review on all of the challenged claims and grounds of unpatentability presented in the petition or deny the petition.

The second proposed change would amend the rules of practice to conform the rules to certain standard practices before the PTAB in IPR, PGR, and CBM