

Dated: April 29, 1997.

**James S. Milford,**

*Acting Deputy Administrator.*

[FR Doc. 97-11689 Filed 5-5-97; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Part 9

[Notice No. 851 (97-105)]

RIN: 1512-AA07

#### Davis Mountains Viticultural Area

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area located in Jeff Davis County, Texas, to be known as "Davis Mountains." This proposal is the result of a petition filed by Maymie Nelda Weisbach of Blue Mountain Vineyard, Inc. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make the wine were grown and enables consumers to better identify the wines they purchase.

**DATES:** Written comments must be received by July 7, 1997.

**ADDRESSES:** Send written comments to: Chief, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221, Attn: Notice No. 851. Copies of written comments received in response to this notice of proposed rulemaking will be available for public inspection during normal business hours at: ATF Reference Library, Document Services Branch, Room 6300, 650 Massachusetts Avenue, NW, Washington, DC 20226.

**FOR FURTHER INFORMATION CONTACT:** Marjorie D. Ruhf, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-8230).

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27

CFR part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas. Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

##### Petition

ATF has received a petition from Maymie Nelda Weisbach, of Blue Mountain Vineyard, Inc., proposing to establish a viticultural area in Jeff Davis County, Texas, to be known as "Texas Davis Mountains." The proposed viticultural area is located in the Trans-Pecos region of west Texas. The entire area contains approximately 270,000 acres, of which approximately 40 acres are planted to vineyards. Blue Mountain Vineyard is the only commercial grower currently active within the proposed viticultural area.

##### Evidence of Name

The petitioner provided evidence that the name "Davis Mountains" is locally known as referring to the area specified in the petition, and proposed that the area be designated as "Texas Davis

Mountains" to aid in national recognition of the area. She noted that, outside of the State of Texas, the name Davis Mountains may not be well known. Evidence supporting the use of the name "Davis Mountains" includes:

(a) One of the U.S.G.S. maps used to show the boundaries of the proposed area (Mount Livermore, Texas—Chihuahua) uses the name "Davis Mountains" to identify the northern portion of the proposed area. There is a park named "Davis Mountain State Park" in the southeastern portion of the proposed area. The map shows no conflicting designation for the remainder of the proposed area.

(b) The petitioner provided an excerpt from the 1952 edition of *The Handbook of Texas*, published by the Texas State Historical Association, which describes the Davis Mountains. The location and other features described in this entry are consistent with the petition.

(c) The petitioner also provided an excerpt from the 1968 edition of *Texas Today*, a book in the Harlow State Geography Series, from the Harlow Publishing Corporation. In it, the Davis Mountains are described as the most extensive and among the highest of the Texas mountain groups.

(d) Finally, the petitioner provided copies of two highway maps, the Champion Map of Texas, and the Exxon Travel Club Map of the United States, both of which identify the Davis Mountains by name.

ATF reviewed available resources and found no references to any other "Davis Mountains." There is national recognition of the name "Davis Mountains" as an area in Texas, known for the McDonald Observatory, which is located there, and as a tourist destination for its history, scenery and wildlife. For purposes of this notice, the name "Davis Mountains" will be used as the name for the proposed area. Comments on the need for further clarification of this name are solicited in the Public Participation section of this notice.

##### Evidence of Boundaries

The petitioner has defined the proposed area primarily by highways which, she states, parallel geographic features which define the area. In support of this approach, the petitioner provided a copy of "Texas," the *Houston Chronicle* Magazine, for June 2, 1996. The cover story was "High mountain vistas, driving the 73-mile loop around the Davis Mountains." In a map associated with the article, the routes used for the driving tour are the same as those selected by the petitioner, except the northern boundary. The

driving tour recommendation followed a route to the north of the proposed northern boundary, which the petitioner drew using other features. As evidence that the proposed boundaries for the area are as specified in the petition, the petitioner states the proposed limits of the area parallel geographic features such as canyons, creeks and escarpments, which represent natural boundaries between the mountains and the surrounding desert.

### Geographical Features

The proposed viticultural area is described in *Great Texas Getaways*, copyright 1992, by Ann Ruff, as follows:

No matter which way you drive into the Davis Mountains you will have to face the barren terrain without the taste of cool water. But when you reach this wonderful oasis, those long, dreary miles are more than worth the reward. Here the days are fresh and cool, the nights brisk, and the scenery fantastic.

The petitioner stated the proposed area is distinguishable from surrounding areas primarily by its altitude, which contributes to the geographic and climatic features which provide for excellent grape-growing.

The petitioner provided the following evidence to support her claims:

### Topography

The U.S.G.S. topographic map submitted by the petitioner shows the proposed area is a mountainous area varying in elevation from 4,500 to 8,300 feet, surrounded by flatter terrain. The petitioner adds these mountains are the second-highest range in Texas. The northern and eastern limits are clearly defined by escarpments. Sharp boundaries in the west and south, however, are lacking as the same formations continue into the Ord and Del Norte Mountains. The Chihuahua desert extends for miles in all directions, its gently rolling grasses interspersed with yucca and agave.

### Soil

The petitioner states the Davis Mountains were created about 35 million years ago by the same volcanic thrust that formed the front range of the Rockies. The mountains are composed of granitic, porphyritic and volcanic rocks, as well as limestones of various ages.

### Climate

The cover story in "Texas," the *Houston Chronicle* Magazine, for June 2, 1996, titled "High mountain vistas, driving the 73-mile loop around the Davis Mountains" by Leslie Sowers, described the proposed area as a "mountain island \* \* \* that is cooler, wetter, and more biologically diverse

than the vast plains of the Chihuahua desert that surround it." The article went on to note that the Davis Mountains receive 20 inches of rainfall a year, contrasted with 10 inches a year in the surrounding desert.

### Proposed Boundary

The boundary of the proposed Davis Mountains viticultural area may be found on two United States Geological Survey (U.S.G.S.) maps with a scale of 1:100,000. The boundary is described in § 9.155

### Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

### Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

### Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) and its implementing regulations, 5 CFR Part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

### Public Participation

ATF requests comments from all interested parties. We are particularly interested in comments concerning the need for the use of the name "Texas Davis Mountains" to clarify the location of the proposed area. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. During the

comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information: The principal author of this document is Marjorie D. Ruhf, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

### List of Subjects in 27 CFR Part 9

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

### Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

### PART 9—AMERICAN VITICULTURAL AREAS

**Paragraph 1.** The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**Par. 2.** The table of sections in subpart C is amended by adding § 9.155 to read as follows:

Sec.  
\* \* \* \* \*

9. Davis Mountains.

**Par. 3.** Subpart C is amended by adding § 9.155 to read as follows:

### Subpart C—Approved American Viticultural Areas

\* \* \* \* \*

### § 9.155 Davis Mountains.

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

(b) *Approved map.* The appropriate maps for determining the boundary of the Davis Mountains viticultural area are two U.S.G.S. metric topographical maps of the 1:100,000 scale, titled:

(1) "Fort Davis, Texas," 1985.

(2) "Mount Livermore, Texas—Chihuahua," 1985.

(c) *Boundary.* The Davis Mountains viticultural area is located in Jeff Davis County, Texas. The boundary is as follows:

(1) The beginning point is the intersection of Texas Highway 17 and Farm Road 1832 on the Fort Davis, Texas, U.S.G.S. map;

(2) From the beginning point, the boundary follows Highway 17 in a southeasterly and then southwesterly direction until it intersects with Highway 166;

(3) The boundary then follows Highway 166 in a southwesterly

direction onto the Mt. Livermore, Texas—Chihuahua, U.S.G.S. map;

(4) The boundary continues to follow Highway 166 in a westerly direction;

(5) The boundary then continues to follow Highway 166 as it turns in a northerly and then northeasterly direction to the point where it meets Highway 118;

(6) The boundary then follows Highway 118 in a northerly direction until it reaches a point where it intersects with the 1600 meter contour line, just north of Robbers Roost Canyon;

(7) The boundary then proceeds in a straight line due east for about two miles until it reaches the 1600 meter contour line to the west of Friend Mountain;

(8) The boundary follows the 1600 meter contour line in a northeasterly direction until it reaches the northernmost point of Friend Mountain;

(9) The boundary then diverges from the contour line and proceeds in a straight line east-southeast until it reaches the beginning point of Buckley Canyon, approximately three-fifths of a mile;

(10) The boundary then follows Buckley Canyon in an easterly direction to the point where it meets Cherry Canyon;

(11) The boundary then follows Cherry Canyon in a northeasterly direction to the point where it meets Grapevine Canyon;

(12) The boundary then proceeds in a straight line from the intersection of Cherry and Grapevine Canyons to the peak of Bear Cave Mountain, on the Fort Davis, Texas, U.S.G.S. map;

(13) The boundary then proceeds in a straight line from the peak of Bear Cave Mountain to the point where Farm Road 1832 begins;

(14) The boundary follows Farm Road 1832 back to its intersection with Texas Highway 17, at the point of beginning.

Approved: April 21, 1997.

**John W. Magaw,**

*Director.*

[FR Doc. 97-11746 Filed 5-5-97; 8:45 am]

BILLING CODE 4810-31-U

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service (NPS) is proposing to revise the current regulation for off-road vehicle (ORV) use at Cape Cod National Seashore. Since the current plan (1981 ORV Management Plan, as amended in 1985) went into effect, new and unrelated measures have impacted the off-road vehicle corridor identified in the amended plan. These measures have resulted from the necessity to protect the federally listed threatened piping plover (*Charadrius melodus*). Because of a lack of flexibility in the Amended 1985 Plan, there has been an inability to adapt it to changing natural resource concerns.

The piping plover became a federally listed threatened species in 1986. In 1995 there were 83 pair of plovers nesting on the beaches of Cape Cod National Seashore. Thirty-three pair were within the eight and one-half miles of the ORV corridor. During the Fourth of July weekend (a period of peak use for ORV's) in 1994, eight-tenths of a mile of the ORV corridor was open. In 1995, only six-tenths of a mile was open. Because of the sand dune configuration on portions of the outer beach, 1995, only six-tenths of a mile was open. Because of the sand dune configuration on portions of the outer beach, it is expected that the birds will continue to nest here. Thus, Cape Cod National Seashore hopes to develop a more flexible and effective regulation governing ORV use that will accommodate the NPS's responsibilities for managing natural resources.

**DATES:** Written comments will be accepted through June 5, 1997.

**ADDRESSES:** All comments should be addressed to: Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

**FOR FURTHER INFORMATION CONTACT:** Maria Burks, Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667. Telephone 508-349-3785, ext. 203.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The mission of the NPS is to preserve and protect park resources while at the same time allowing for the enjoyment of these same resources in a manner that will leave them unimpaired for future generations. In September 1995, Cape Cod National Seashore convened a committee to negotiate a rulemaking (per the Federal Advisory Commission Act (FACA), 5 U.S.C. App. II conflicts, while also providing optimum protection for the piping plover

(*Charadrius melodus*) in compliance with the Endangered Species Act of 1973, as amended, and other Seashore resources.

The 1981 ORV Management Plan was challenged in U.S. District Court. However, the plan, as amended in 1985 (50 FR 31181), was upheld by the District Court in 1988 and the U.S. Court of Appeals in 1989. The District Court found that ORV use at Cape Cod National Seashore is not inappropriate; that the 1985 Plan minimized user conflicts; that the NPS had provided other recreational users adequate use of the Seashore; that the NPS had properly surveyed the sentiments of Seashore users; and that ORV use, as managed by the NPS, does not adversely affect the Seashore's values or its ecology.

The 1985 regulation that established an 8.5 mile ORV corridor on the 40 miles of outer beach within the Seashore would have provided a satisfactory solution except that since 1988, the number of nesting pair of piping plover increased in this area over 800 percent. The ORV corridor is one of the prime nesting areas in the Seashore (in 1995, 33 of 87 pair nested in the corridor). Primarily because of plovers in the corridor, the Seashore staff monitors every bird, nest and egg daily to determine if the ORV corridor should be open or closed. Symbolic fencing is put up as soon as a nest is established to identify the site. Wire enclosures are put up once the eggs have been laid and the ORV corridor is closed from the time the birds hatch until they fledge, approximately 28 days later. In the past few years, during the time when the Seashore receives the most visitors (Fourth of July), including people wishing to use the ORV corridor, only 0.4 to 0.6 miles of the corridor has been open.

##### **Decision To Initiate Negotiated Rulemaking**

The need for a new rule and the use of the negotiated process was motivated by a number of events including legislative requirements, past litigation, management issues and inflexibility of the existing rule to deal with changing conditions such as the use of the corridor by the piping plover. The proposed regulation and the negotiated rulemaking process is an attempt to manage off-road vehicle (ORV) access on the outer beach in a way that accommodates the wishes of ORV enthusiasts and those choosing other forms of beach use, while minimizing impacts to natural and cultural resources and providing a degree of flexibility for managing the beach.

## **DEPARTMENT OF THE INTERIOR**

### **National Park Service**

#### **36 CFR Part 7**

#### **RIN 1024-AC47**

### **Cape Cod National Seashore, Off-road Vehicle Use**

**AGENCY:** National Park Service, Interior.