

**FOR FURTHER INFORMATION CONTACT:**

Concerning the proposed regulations, Martin Huck, (202) 622-7750; concerning submissions of comments and/or requests for a public hearing, Treena Garrett, (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:****Background and Explanation of Provisions**

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 382. The temporary regulations provide rules for determining whether a loss corporation has an ownership change where a qualified trust described in section 401(a) distributes an ownership interest in an entity. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments and these proposed regulations.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations provide relief to qualifying loss corporations that might be affected by an unintended consequence of the operation of the statute. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Nevertheless, the IRS and Treasury request comments from small entities that believe they might be adversely affected by these regulations. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public

hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these regulations is Martin Huck, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

**PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.382-10 is also issued under 26 U.S.C. 382(m). \* \* \*

**Par. 2.** Section 1.382-1 is amended by revising the entry for § 1.382-10 to read as follows:

**§ 1.382-10 Special rules for determining time and manner of acquisition of an interest in a loss corporation (temporary).**

**Par. 3.** Section 1.382-10 is added to read as follows:

**§ 1.382-10 Special rules for determining time and manner of acquisition of an interest in a loss corporation (temporary).**

[The text of proposed § 1.382-10 is the same as the text of § 1.382-10T published elsewhere in this issue of the **Federal Register**.]

Robert E. Wenzel,

*Deputy Commissioner of Internal Revenue.*

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**DEPARTMENT OF THE TREASURY****Alcohol and Tobacco Tax and Trade Bureau****27 CFR Part 9**

[Notice No. 12]

RIN 1512-AC78

**Proposed McMinnville Viticultural Area (2002R-217P)**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the "McMinnville" viticultural area in Yamhill County, Oregon, within the existing Willamette Valley viticultural area. The proposed viticultural area would include only the land at and between the elevations of 200 feet and 800 feet within the described boundaries. We propose to amend the regulations to include this area, and we invite comments on this proposal, especially from those whose brand names may be affected by this proposal.

**DATE:** We must receive written comments by August 26, 2003.

**ADDRESSES:** You may send comments to any of the following addresses—

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 50221, Washington, DC 20091-0221 (Attn: Notice No. 12);

- 202-927-8525 (facsimile);
- [NPRM@ttb.gov](mailto:NPRM@ttb.gov) (e-mail); or
- <http://www.ttb.gov> (An online comment form is posted with this Notice on our Web site).

You may view copies of this notice and any comments received at <http://www.ttb.gov/alcohol/rules/index.htm> or by appointment at the ATF Reference Library, 650 Massachusetts Avenue, NW., Washington, DC 20226; phone 202-927-7890.

See the **Public Participation** section of this Notice for specific instructions and requirements, as well as information on how to request a public hearing.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, P.O. Box 18152, Roanoke, VA 24014; telephone 540-344-9333.

**SUPPLEMENTARY INFORMATION:****Background on Viticultural Areas**

*What Is TTB's Authority To Establish a Viticultural Area?*

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity, while prohibiting the use of deceptive information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions.

Regulations in 27 CFR Part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Title 27 CFR Part 9, American Viticultural

Areas, contains the list of approved viticultural areas.

#### *What Is the Definition of a Viticultural Area?*

Title 27 CFR 4.25a(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features whose boundaries have been delineated in subpart C of part 9. The establishment of viticultural areas allows the identification of regions where a given quality, reputation, or other characteristics of the wine is essentially attributable to its geographic origin. We believe that the establishment of viticultural areas allows wineries to describe more accurately the origin of their wines to consumers and helps consumers identify the wines they purchase. Establishment of a viticultural area is neither an approval nor endorsement by TTB of the wine produced there.

#### *What Is Required To Establish a Viticultural Area?*

Section 4.25(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition TTB to establish a grape growing region as a viticultural area. The petition must include:

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that the boundaries of the proposed viticultural area are as specified in the petition;
- Evidence relating to geographical features, including growing conditions, such as climate, soil, elevation, physical features, etc., that distinguish the proposed area from surrounding areas;
- A description of the specific boundaries of the proposed viticultural area, based on features reflected on maps approved by the United States Geological Survey (USGS); and
- A copy or copies of the appropriate USGS-approved map(s) with the boundaries prominently marked.

#### *What Impact Will This Have on Current Labels?*

If this proposed viticultural area is established, bottlers who use brand names like "McMinnville" may be affected. If you fall in this category, you must ensure that your existing products are eligible to use the name of the viticultural area as an appellation of origin. For a wine to be eligible, at least 85 percent of the grapes in the wine must have been grown within the viticultural area and meet the other

requirements listed in 27 CFR 4.25a(e)(3).

If the wine is not eligible for the appellation, you must change the brand name and obtain approval of a new label. Different rules apply if the brand name in question is on a label approved prior to July 7, 1986. See 27 CFR 4.39(i) for details. Additionally, if you use the viticultural area name on a wine label in a context other than appellation of origin, the general prohibitions against misleading representation in part 4 of the regulations apply.

#### **McMinnville Petition**

Mr. Kevin Byrd, of Youngberg Hill Vineyards, McMinnville, Oregon, has petitioned TTB for the establishment of a viticultural area to be called "McMinnville." The proposed viticultural area is located approximately 40 miles southwest of Portland, Oregon, just west of the city of McMinnville and north of the village of Sheridan in Yamhill County. The proposed area is also entirely within the existing Willamette Valley viticultural area described in 27 CFR 9.90. According to the petitioner, there are 14 wineries and 523 acres planted to vines within the proposed McMinnville viticultural area.

#### *What Name Evidence Has Been Provided?*

The proposed viticultural area is named for the city of McMinnville, the county seat of Yamhill County, which is located at the northeastern border of the proposed viticultural area. Mr. Byrd states that the proposed area is considered part of greater McMinnville and notes that most of the wineries within the proposed boundaries have McMinnville addresses. He provided historical information on the name "McMinnville" from "Oregon Geographic Names" by Lewis L. McArthur (Oregon Historical Society, 1982). Mr. McArthur stated:

McMinnville was named by William T. Newby, who was born in McMinnville, Warren County, Tennessee, in 1820, and came to Oregon in 1843. He settled near the present site of McMinnville early in 1844, and in 1853 built a grist mill and founded the town. In 1854 he started a store. He was county assessor in 1848 and state senator in 1870. McMinnville post office was established on May 29, 1855, with Elbrige G. Edson postmaster. The name was later changed to the present spelling.

According to the petitioner, McMinnville is known to consumers as a wine producing area. To demonstrate this, he submitted several quotes from Internet sites. The first quote is from the Web site of the Greater McMinnville

Chamber of Commerce; the other two are from travel sites:

- "Nestled in the heart of Oregon's beautiful wine country, McMinnville is Oregon at its best." (See <http://www.mcminnville.org/welcome.html>.)
- "Before gaining its glamorous reputation as a wine-producing center, McMinnville was known as the home of Linfield College \* \* \*." (See <http://www.ohwy.com/or/m/mcminnvi.htm>.)
- "McMinnville is known for its picturesque vineyards that dot the foothills. Located in Yamhill County, the oldest county in Oregon, McMinnville is often compared to the wine regions of France and Germany." (See <http://www.el.com/to/mcminnville/>).

In addition, the petitioner notes that McMinnville is the home of the International Pinot Noir Celebration, held every July since 1987 at the Linfield College campus.

#### *What Boundary Evidence Has Been Provided?*

The boundaries for the proposed McMinnville viticultural area are based primarily on elevation. The proposed boundaries encompass Gopher Valley, Dupee Valley, Muddy Valley, and the surrounding hills, all geographically part of the eastern foothills of the Coast Range. However, within the boundaries described in the proposed regulation section of this notice, only land at and between 200 and 800 feet of elevation is included in the proposed viticultural area. According to the petitioner, those elevations are distinctive in their soils and climate when compared to other parts of the Willamette Valley. The petitioner states that below the 200 foot elevation line the Willamette silt-based soils create growing conditions substantially different from those in the proposed area. The greater depth, water holding capacity, and fertility of these lower elevation soils extends the vegetative period of the vine and delays ripening of vineyards planted at those elevations. The soils of the proposed area are described in greater detail in the following section.

In addition, the petitioner asserts that elevation greatly affects the microclimate of the proposed viticultural area. He notes that elevations below 200 feet are more prone to frost when compared to the higher elevations. On the other hand, elevations above 800 feet experience far fewer degree growing days than lower elevations, which prevents the reliable ripening of wine grapes.

The petitioner's proposal is unusual in that the proposed boundaries encompass land that will not be part of

the proposed viticultural area. Land below 200 feet and above 800 feet will be excluded due to soil and climate differences with land between those elevations. A precedent does exist for such a viticultural area. Within the boundaries of the Mendocino Ridge viticultural area, only land at and above the 1200 foot elevation line is included in the viticultural area (See 27 CFR 9.158 and T.D. ATF-392 at 62 FR 55512, October 27, 1997). However, because of the unusual nature of such boundaries, TTB is particularly interested in public comments on the proposed McMinnville boundaries. Specifically, does the evidence regarding elevation support the exclusion of some of the land lying within the proposed area's outer boundaries?

#### *What Evidence of Distinctive Geographical Features Has Been Provided?*

The petitioner asserts that the geographic and climatic features of the proposed McMinnville viticultural area distinguish it from surrounding areas of the Willamette Valley.

#### *Temperature and Precipitation*

According to the petitioner, the proposed viticultural area's location just east of the Coast Range and northeast of the Van Duzer Corridor greatly affects its growing season temperatures and precipitation. He submitted temperature and precipitation data from the Oregon Climate Service comparing McMinnville with two other sites in the western Willamette Valley—Dallas, Oregon, to the south of McMinnville, and Scoggins Dam, Oregon, to the north. This data shows that McMinnville is, on average, warmer and drier than Dallas and Scoggins Dam. McMinnville averaged 2178 degree growing days above 50 degrees during the growing season for the years 1971–2000, with average yearly precipitation of 41.66 inches. Dallas, for the same period, averaged 2116 degree growing days above 50 degrees, with precipitation of 49.13 inches. Scoggins Dam, for the period, averaged 1974 degree growing days above 50 degrees, with precipitation of 50.68 inches.

The petitioner explains that cooler and wetter conditions south of McMinnville are due to the Van Duzer Corridor, a pass through Oregon's Coast Range. Cool, wet marine air flows inland through this pass, causing cooler, wetter growing conditions in areas east of the pass. North and west of McMinnville, at Scoggins Dam for example, the petition states that the land makes a rapid transition to the slopes of the Coast Range, which has

much cooler temperatures and greater rainfall.

#### *Soils and Geology*

According to the petitioner, the soils and geology of the proposed McMinnville viticultural area are different from those in surrounding areas, thus providing distinctive growing conditions for the area's grapes. To demonstrate the soil differences, the petitioner submitted soil survey maps published by the Soil Conservation Service of the U.S. Department of Agriculture. The soils of the McMinnville area are characterized by several types of shallow (less than 40 inches deep) silty clay and clay loams that exhibit low total available moisture. These soils, primarily Yamhill, Nekia, Peavine, Willakenzie, and Hazelair, all have a typical depth to base materials of between 20 and 40 inches, while the average total available moisture for these soils ranges from 4.8 to 6.3 inches.

To the west and northwest of the proposed area, the petition notes, the soils transition to those of the Olyic and Hembre associations. While these soils are also shallow silty clay and clay loams, they tend to be acidic. To the north of the area (within the proposed Yamhill-Carlton viticultural area), a greater percentage of the soils are of the Woodburn-Willamette association. These soils are of greater depth (60 inches) and have a higher total available moisture (12 to 13 inches). The Woodburn-Willamette soils also predominate to the south and southwest of the proposed area.

The petitioner states that the most distinctive geological feature within the proposed area is the Nestucca Formation, a 2000-foot thick bedrock formation that extends west from the city of McMinnville to the slopes of the Coast Range. This formation contains marine sandstone and mudstone with intrusions of marine basalts. These intrusions differentiate the formation from the pure basaltic parent materials found under the Red Hills and Chehalem Mountains and the pure marine sedimentary materials of the Yamhill Formation found on the valley floor.

Because of these marine basalts, the petition notes that the ground water composition of the McMinnville area is significantly different from that in areas to the east. According to data obtained from Oregon State University's Drinking Water Program, it contains greater dissolved sodium (66 mg/L vs. 16 mg/L), less dissolved potassium (.9 mg/L vs. 3.8 mg/L), and greater dissolved boron (230 ug/L vs. 20 ug/L) than the ground water east of McMinnville. The

petitioner asserts that significant variations in these component materials can result in grapes with unique flavor and development characteristics.

#### *Boundary Description*

See the narrative boundary description of the petitioned viticultural area in the proposed regulation published near the end of this notice.

#### **Public Participation**

##### *Comments Sought*

We request comments from anyone interested. Please support your comments with specific information about the proposed area's name, growing conditions, or boundaries. Due to the unusual nature of the proposed boundaries, we are particularly interested in comments regarding the proposed area's elevation limitations. All comments must include your name and mailing address, reference this notice number, and be legible and written in language acceptable for public disclosure.

Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We will consider comments received after the closing date if we can. We regard all comments as originals.

##### *Confidentiality*

We do not recognize any submitted material as confidential. All comments are part of the public record and subject to disclosure. Do not enclose in your comments any material you consider confidential or inappropriate for disclosure.

##### *Submitting Comments*

You may submit written comments in any of four ways:

- *By mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *By facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—
  - (1) Be on 8.5 by 11 inch paper;
  - (2) Contain a legible, written signature; and
  - (3) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.
- *By e-mail:* You may e-mail comments to [nprm@ttb.gov](mailto:nprm@ttb.gov). Comments transmitted by electronic-mail must—
  - (1) Contain your e-mail address;
  - (2) Reference this notice number on the subject line; and
  - (3) Be legible when printed on 8.5 by 11 inch paper.

• *By online form:* We provide a comment form with the online copy of this notice on our Web site at <http://www.ttb.gov/alcobol/rules/index.htm>.

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, in light of all circumstances, whether a public hearing will be held.

#### Disclosure

You may view copies of the petition, the proposed regulation, the appropriate maps, and any comments received by appointment at the ATF Reference Library, 650 Massachusetts Avenue, NW., Washington, DC 20226. You may also obtain copies at 20 cents per 8.5 x 11-inch page. Contact the ATF Librarian at the above address or telephone 202-927-7890 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and the comments received on the TTB Web site. All posted comments will show the names of commenters but not street addresses, telephone numbers, or e-mail addresses. We may also omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the ATF Reference Library. To access the online copy of this notice and any posted comments, see this notice number at <http://www.ttb.gov/alcobol/rules/index.htm>.

#### Regulatory Analyses and Notices

##### *Paperwork Reduction Act*

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and its implementing regulations, 5 CFR part 1320, do not apply.

##### *Regulatory Flexibility Act*

We certify that this proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is 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, 58 FR 51735. Therefore, it requires no regulatory assessment.

#### Drafting Information

The principal author of this document is Jennifer Berry, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

#### List of Subjects in 27 CFR Part 9

Wine.

#### Authority and Issuance

For the reasons discussed in the preamble, we propose to amend Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, 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.

2. Subpart C is amended by adding § 9.\_\_\_\_ to read as follows:

#### Subpart C—Approved American Viticultural Areas

##### § 9.\_\_\_\_ McMinnville.

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

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the McMinnville viticultural area are five United States Geological Survey (USGS) topographic maps, scale 1:24,000:

- (1) McMinnville, OR, 1957, photorevised 1970;
- (2) Muddy Valley, OR, 1979;
- (3) Stony Mountain, OR, 1979;
- (4) Sheridan, OR, 1956, photorevised 1970; and
- (5) Ballston, OR, 1956, photorevised 1970.

(c) *Boundary.* The McMinnville viticultural area is located in Yamhill County, Oregon, and is entirely within the Willamette Valley viticultural area (27 CFR 9.90). Within the boundary description that follows, the McMinnville viticultural area encompasses only that land at and between the 200 foot and 800 foot elevation lines.

(1) From the point of beginning on the McMinnville, OR map in section 18, T.4.S, R.4.W, at the intersection of Baker Creek Road and Hill Road, follow Baker Creek Road west to its intersection with Power Plant Hill Road (known locally as Power House Hill Road) on the Muddy Valley map;

(2) Then proceed southwest on Power Plant Hill Road to its intersection with Peavine Road;

(3) Follow Peavine Road northwest to its intersection with Gill Creek;

(4) Follow Gill Creek in a southwesterly direction to its

intersection with the 800-foot contour line in section 18, T.4.S., R.5.W, on the Muddy Valley map;

(5) Starting on the west bank of Gill Creek, follow the meandering 800-foot contour line in a westerly direction, crossing Gopher Valley Road in section 14, T.4.S., R.6.W. on the Stony Mountain map, and continue to follow the 800-foot contour line as it meanders back and forth four times between the Stony Mountain map and the Muddy Valley map in section 24, T.4.S., R.6.W.;

(6) Continue to follow the meandering 800-foot contour line in a southwesterly direction, crossing Rock Creek Road in section 27, T.4.S., R.6.W. on the Stony Mountain map, to the 800-foot contour line's intersection with Rock Creek Road in section 46, T.5.S, R.6.W., on the Stony Mountain map;

(7) Then follow Rock Creek Road south to its intersection with the Salmon River Highway on the Sheridan map;

(8) Follow the Salmon River Highway east through the village of Sheridan and then northeast through the Ballston map, to its intersection with Oldsville Road on the Muddy Valley map;

(9) Follow Oldsville Road northeast to its intersection with McCabe Chapel Road (unnamed on the map);

(10) Follow McCabe Chapel Road west then north to its intersection with Masonville Road;

(11) Follow Masonville Road east to its intersection with Old Sheridan Road on the McMinnville map;

(12) Follow Old Sheridan Road northeast to its intersection with Peavine Road;

(13) Follow Peavine Road northwest for approximately 800 feet to its intersection with Hill Road; and

(14) Follow Hill Road north to its intersection with Baker Creek Road and the beginning point.

Signed: June 19, 2003.

**John J. Manfreda,**  
*Acting Administrator.*

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#### DEPARTMENT OF THE TREASURY

#### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 9

[Notice No. 11]

RIN 1512-AC81

#### Proposed Columbia Gorge Viticultural Area (2002R-103P)

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.