

(ii) *Annuity at Normal Retirement Age—Determination of Employee-Derived and Total Plan Vested Accrued Benefit.*

Example 1.

For purposes of this example, it is assumed that A's total accrued benefit under the plan in the normal form of benefit commencing at normal retirement age is \$2,949 per year. A's benefit, as of January 1, 2006, would be determined as follows:

(1) Determine A's total accrued benefit in the form of an annual single life annuity commencing at normal retirement age under the plan's formula (\$2,949 per year payable at age 65).

(2) Determine A's accumulated contributions with interest to January 1, 1997. As of December 31, 1987, A's accumulated contributions with interest under the plan provisions were \$3,021. A's employee contributions are accumulated from December 31, 1987 to January 1, 1997 using 120 percent of the Federal mid-term rate under section 1274(d). This rate is 10.61 percent for 1988, 11.11 percent for 1989, 9.57 percent for 1990, 9.78 percent for 1991, 8.10 percent for 1992, 7.63 percent for 1993, 6.40 percent for 1994, and 9.54 percent for 1995. It is assumed for purposes of this example that 120 percent of the Federal mid-term rate is 7.00 percent for each year between 1996 and 2006, and that the 30-year Treasury rate for December 2005 is 8.00 percent. Thus, A's contributions accumulated to January 1, 1997, equal \$6,480.

(3) Determine A's accumulated contributions with interest to normal retirement age (January 1, 2006) using, for the 1996 plan year and for years until normal retirement age, 120 percent of the Federal mid-term rate under section 1274(d), which is assumed to be 7.00 percent (\$11,913).

(4) Determine the accrued annual annuity benefit derived from A's contributions by dividing A's accumulated contributions determined in paragraph (3) of this *Example 1* by the plan's appropriate conversion factor. The plan's appropriate conversion factor at age 65 is 9.196, and the accrued benefit derived from A's contributions would be \$11,913 ÷ 9.196 = \$1,295.

(5) Determine the accrued benefit derived from employer contributions as the excess, if any, of the employee's accrued benefit under the plan over the accrued benefit derived from employee contributions (\$2,949 - \$1,295 = \$1,654 per year).

(6) Determine the vested percentage of the accrued benefit derived from employer contributions under the plan's vesting schedule (100 percent).

(7) Determine the vested accrued benefit derived from employer contributions by multiplying the accrued benefit derived from employer contributions by the vested percentage (\$1,654 × 100 percent = \$1,654 per year).

(8) Determine A's vested accrued benefit in the form of an annual single life annuity commencing at normal retirement age by adding the accrued benefit derived from employee contributions and the vested accrued benefit derived from employer contributions, the sum of paragraphs (4) and (7) of this *Example 1* (\$1,295 + \$1,654 = \$2,949 per year).

Example 2.

This example assumes the same facts as *Example 1* except that A's total accrued benefit under the plan in the normal form of benefit commencing at normal retirement age is \$1,000 per year. A's benefit, as of January 1, 2006, would be determined as follows:

(1) Determine A's total accrued benefit in the form of an annual single life annuity commencing at normal retirement age under the plan's formula (\$1,000 per year payable at age 65).

(2) Determine A's accumulated contributions with interest to January 1, 1997 (\$6,480 from paragraph 2 of *Example 1*).

(3) Determine A's accumulated contributions with interest to normal retirement age (January 1, 2006) (\$11,913 from paragraph 3 of *Example 1*).

(4) Determine the accrued annual annuity benefit derived from A's contributions by dividing A's accumulated contributions determined in paragraph (3) of this *Example 2* by the plan's appropriate conversion factor (\$1,295 from paragraph 4 of *Example 1*).

(5) Determine the accrued benefit derived from employer contributions as the excess, if any, of the employee's accrued benefit under the plan over the accrued benefit derived from employee contributions. Because the accrued benefit derived from employee contributions (\$1,295) is greater than the employee's accrued benefit under the plan (\$1,000), the accrued benefit derived from employer contributions is zero, and A's vested accrued benefit in the form of an annual single life annuity commencing at normal retirement age is \$1,295 per year.

(d) *Delegation to Commissioner.* The Commissioner may prescribe additional guidance on calculating the accrued benefit derived from employee contributions under a defined benefit plan through publication in the Internal Revenue Bulletin of revenue rulings, notices, or other documents (see § 601.601(d)(2) of this chapter).

* * * * *

(g) *Effective date.* Paragraphs (c)(1), (c)(2), (c)(3), (c)(5), (c)(6) and (d) of this section are effective for plan years beginning on or after January 1, 1997.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

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Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

RIN 1512-AA07

[Notice No. 817]

The Malibu-Newton Canyon Viticultural Area (95R-014P)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing the establishment of a viticultural area in the State of California to be known as "Malibu-Newton Canyon." This proposal is the result of a petition submitted by Mr. George Rosenthal, President of Rancho Escondido, Inc.

ATF believes that the establishment 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 February 20, 1996.

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. 817). Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Brokaw, 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 definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, 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 the 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 Mr. George Rosenthal, President of Rancho Escondido, Inc., proposing to establish a new viticultural appellation in the Malibu area of Los Angeles County, California, to be known as "Malibu-Newton Canyon." The viticultural area, comprising approximately 850 acres, is located within Newton Canyon which is a bowl shaped valley located on the south facing side of the Santa Monica Mountains. Vineyards currently within the proposed viticultural area are located on the Rancho Escondido Estate. Rancho Escondido is comprised of approximately 157 acres, all of which lies within the proposed "Malibu-Newton Canyon" viticultural area. Approximately, 14 of these acres are planted with premium wine producing vineyards. Varietals include Cabernet Sauvignon, Merlot, Cabernet Franc, Chardonnay and Petite Verdot. Currently, there are no wineries located within the proposed "Malibu-Newton Canyon" area. The petition provides the following information as evidence that the proposed area meets the regulatory requirements discussed previously.

Evidence That the Name of the Area Is Locally or Nationally Known

According to the petitioner, the origin of the name Malibu comes from the ancient Chumash Indian word MALA I BOO, meaning "Place on the Cliff," and was the name of an Indian village just beyond Malibu Beach. After the Spaniards took control of southern California, the encompassing Chumash ranchera UMALIBO became known as the Malibu Rancho. A Spanish settler, Jose Bartolome Tapia gained control of

the rancho and was later granted the land by the Governor of the Californias. The present day spelling appears on the name of the Topanga Malibu Sequit grant dated July 12, 1805. It originally totalled 13,315 acres, one of the largest southern California Ranchos at that time.

The petitioner further states that throughout the 19th century, Rancho Malibu changed hands many times but remained intact. Until the construction of the Pacific Coast Highway in the 1930's, the privacy of Rancho Malibu had not been invaded. With the burgeoning economy of southern California, conditions greatly changed. This historic rancho was finally subdivided during the same decade. Following soon after, the famous Malibu Beach Colony was established where movie stars and industry moguls began constructing their homes. The Malibu area then quickly developed into the highly recognized community of Los Angeles as it is known today.

Throughout this region there exists topography in the form of roads, a creek, a lake, a canyon, a beach, hiking trails, parks, vistas, etc. which denote the name "Malibu." The region lying roughly from the ridge line of the Santa Monica Mountains to the ocean, and from Topanga Canyon to the Ventura County line is commonly known as Malibu, according to the petitioner. While the city of Malibu was incorporated in 1992, the entire surrounding area described above continues to be recognized as Malibu. "Malibu" could be applied to any of the hills/mountains which drain toward the ocean through the city of Malibu, including Newton Canyon, the location of the proposed viticultural area.

The petitioner provided a 1:250,000 scale Topographic-Bathymetric map of Los Angeles to document the use of the name, "Malibu." An article in the October 15, 1994, issue of the "Wine Spectator," entitled "A Vineyard Grows in Malibu Canyon," refers to the area around "The Malibu Estate" (Rancho Escondido, Inc.) as "Malibu Hills." Also, included as an exhibit was a copy of an article from, "The Underground Wine Journal," 1994, entitled, "Distinctive New Wines." This article refers to "The Malibu Estate" as being located "in the hills above Malibu."

According to the petitioner, the name "Newton Canyon" is generally known as describing the specific area in which the proposed viticultural area is located. This is evidenced by the name of the main street running through the proposed viticultural area—"Newton Canyon Road." In addition, maps of the area, including the U.S.G.S. map

referenced and shown within the petition, label the area as, "Newton Canyon." The petitioner states that, "Newton Canyon alone is not descriptive enough to describe the general location of the proposed viticultural area, and further, might possibly cause public confusion in relation to Newton Vineyards, located in the Napa Valley." Therefore, the petitioner proposed the name, "Malibu-Newton Canyon."

Historical or Current Evidence That the Boundaries of the Proposed Viticultural Area Are as Specified in the Petition

The boundaries of the proposed "Malibu-Newton Canyon" viticultural area follow the natural ridge lines which define Newton Canyon and are delineated on the U.S.G.S. Point Dume, California, quadrangle map.

Newton Canyon is a bowl shaped valley located on the south facing side of the Santa Monica Mountains, in the Malibu area of Los Angeles County. The canyon is oriented along an east-west axis. The valley floor lies at an elevation of approximately 1,400 feet. The surrounding ridgeline ranges in elevation from 1,800–2,100 feet on the southern ocean side of the canyon, continuing to 2,100–2,800 feet on the high side of the canyon to the north.

According to the petitioner, the elevation of the southern rim of the canyon is low enough to allow evening fog to sift into the valley, but high enough to keep out the marine layer that shrouds much of the coastline throughout the daytime. The northern rim of the canyon joins the crest of the Santa Monica Mountains that divides oceanside from leese. Lying at the eastern most side of the canyon, Castro Peak is another distinguishing feature which marks one of the highest points in the Santa Monica Mountains at 2,824 feet.

The petitioner further states that approximately two-thirds of the surrounding Malibu area contains slopes greater than 25 percent, with only one-fifth having relatively level terrain. Throughout the past several decades, most of the usable land in the Malibu area has been developed. Because of increasingly high land prices, very little of the land in the general Malibu area is still used for agriculture. The Santa Monica Mountains also have thousands of acres dedicated to State and national parks, with more acreage being aggressively acquired by public conservation agencies.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, etc.) Which Distinguish the Viticultural Features of the Proposed Area From Surrounding Areas

Climate

Based upon a 1994 climate study completed by Fox Weather, Oxnard, California, the petitioner asserts the following: The general climate of the Malibu area is typical of southern California with mild rainy winters, and warm dry summers. However, there are several climatological factors which distinguish the proposed "Malibu-Newton Canyon" viticultural area from the surrounding region.

While summer temperatures often exceed 80 degrees in the afternoon, cooling ocean breezes flow into the valley in the evening, according to the petitioner. Moreover, during the evening and early morning a light fog often filters into the valley and settles along the slopes, creating a unique microclimate which is significantly cooler than the surrounding inland areas. Typically, the morning sun shines through the fog, which in turn is swept out by warm winds and high daytime temperatures. The valley enjoys southern exposure to the sun throughout the afternoon. According to the petitioner, these conditions are ideal for premium grape growing.

Because of its high elevation and orientation, the proposed viticultural area does not experience the constantly overcast skies and cooler temperatures of the coastal region immediately below.

Newton Canyon, within which the proposed viticultural area is located, is a unique pocket protected from marine influence. The coastline near sea level is a more temperate climate controlled by marine stratus with uniformly cold temperatures, fog and low clouds. This cooler and more humid coastal environment, mainly affecting areas below the 1,300 foot level, can create grape rot and delay maturation.

The petitioner claims that the proposed "Malibu-Newton Canyon" viticultural area is, in the daytime, a sunny warm oasis for a coastal location. The proposed area is located at an elevation which lies just at the bottom of the inversion layer and just at the top of the marine layer. Typically, the marine layer ceiling is approximately 1,400 feet on average. The southern or bottom rim of the canyon acts as a barrier to the marine layer, preventing the bulk of the coastal fog and low clouds from penetrating the valley for extended periods of time. This allows the "Malibu-Newton Canyon" area to

enjoy favorable cooling effects of the Pacific ocean and have the warm sunny daytime temperatures found in the adjacent interior valleys.

Nearby inland areas experience uniformly hot summer temperatures similar to those experienced in the upper elevations on the oceanside of the Santa Monica Mountains. However, these inland areas receive little or no fog and much less precipitation than the oceanside regime, according to the petitioner.

An additional distinctive aspect is an increasing amount of precipitation with increasing elevation. The petitioner states that upland weather stations report practically twice the mean precipitation of the nearby lowland stations. Furthermore, the greatest monthly precipitation during the rainy season is from 1.5 to 3.0 times as great as that for the lowland stations. Precipitation is concentrated in the winter months. The average annual rainfall is about 24 inches, with approximately 12 percent occurring from the months of April to October.

The proposed area experiences typical low temperatures in the winter time, just above freezing temperatures. Infrequent winter freezes have been known to occur during the dormant winter growing cycle.

In summary, the petitioner states that the proposed viticultural area is characterized by an isolated microclimate that captures the favorable climatic conditions necessary for premium wine grape growing. In contrast, the petitioner states that the surrounding areas found on the oceanside of the Santa Monica Mountains (i.e. Malibu, Oxnard, Santa Monica) are uniformly cool and overcast. Surrounding inland areas found on the leeside of the Santa Monica Mountains (i.e. Thousand Oaks, Agoura, Woodland Hills) are uniformly hot and dry. The petitioner provided a diagram illustrating the "Malibu-Newton Canyon" microclimate and a November 29, 1994, "CLIMATOLOGICAL SURVEY FOR RANCHO ESCONDIDO VINEYARDS," by Alan D. Fox of Fox Weather.

Physical Features

According to the petitioner, the primary distinction of the proposed viticultural area is its unique combination of shape, elevation, orientation and relative location to the marine influences of the Pacific Ocean. The proposed area lies within a clearly defined valley with a "bowl" shape resting high on the oceanside of the Santa Monica Mountains. These physical features create a pocket which

harbors the distinct microclimate described above. The petitioner provided aerial photos to illustrate these physical features.

Drainage

All of the proposed viticultural area drains into Newton Canyon Creek, continuing to Zuma Creek which then drains into the Pacific Ocean at Point Dume's westward beach, according to the petitioner.

Soils

As evidence of soil types, the petitioner provided a 1994 soils study completed by Soil & Plant Laboratory, Inc., Orange, California, in addition to "Soils of the Malibu Area California" published by the Soil Conservation Service, United States Department of Agriculture.

According to this information, major soils within the proposed viticultural area range from loam to clay loam in texture. Subsoil texture ranges from clay loam to clay. Current plantings are mainly on Castaic and Rincon silty clay loams and Malibu loam which are lower elevation terrace soils that are moderately deep, with favorable Capability Class ratings of II to IV. Steeper hillside soils (mostly above the 1,700 foot contour line) are shallower with Capability Class ratings ranging from IV to VIII.

Soils in the proposed viticultural area have moderate to high inherent fertility. Soil reaction in surface soils ranges from moderately acid to slightly alkaline. Subsoil ph varies with type and several areas are calcareous.

According to the petitioner, soil tests performed prior to the planting of vineyards in 1988 revealed that the topsoil found in much of lower Newton Canyon contained crushed rock, as a result of the construction of the nearby Kanan Dume Road tunnel, which is ideal for good drainage.

The surrounding areas are mainly steep hillsides and mountainous uplands with poor soil capability. These soils are usually shallower than those found in the proposed viticultural area, and are subject to erosion.

Proposed Boundary

The boundary of the proposed "Malibu-Newton Canyon" viticultural area may be found on one United States Geological Survey map, entitled Point Dume Quadrangle, California, 7.5 minute series, with a scale of 1:24,000.

Public Participation—Written Comments

ATF requests comments from all interested parties. 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. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and 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 comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927-8602, provided the comments: (1) are legible; (2) are 8½ x 11" in size, (3) contain a written signature, and (4) are 3 pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

During the comment period, any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 60-day comment period. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by 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 proposed regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to describe more accurately the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, 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 that area.

Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 44 U.S.C. Chapter 35, 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.

Drafting Information

The principal author of this document is David Brokaw, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

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

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.152 to read as follows:

* * * * *

§ 9.152 Malibu-Newton Canyon.

(a) *Name.* The name of the viticultural area described in this petition is "Malibu-Newton Canyon."

(b) *Approved maps.* The appropriate map for determining the boundary of the Malibu-Newton Canyon viticultural area is the U.S.G.S. map, "Point Dume Quadrangle, California" (7.5 Minute Series 1:24,000 Topographic map, photorevised 1981).

(c) *Boundary.* The Malibu-Newton Canyon viticultural area is located in Los Angeles County, California. The boundary is as follows:

(1) Beginning at the intersection of the Newton Canyon creek (lowest elevation) and an unnamed medium duty road referred to by the petitioner as Kanan Dume Road at the boundary of section 13 and 18 on the U.S.G.S. map "Point Dume Quadrangle."

(2) Then south along Kanan Dume Road to the point where an unnamed, unimproved dirt road referred to by the petitioner as Ramerez Mountain Way crosses over Kanan Dume Road at the tunnel in the northwest corner of section 19.

(3) Then east along Ramerez Mountain Way, following the southern ridgeline of Newton Canyon, to Latigo Canyon Road in the southwest corner of section 17.

(4) Then south along Latigo Canyon Road to an unnamed, unimproved dirt road referred to by the petitioner as Newton Mountain Way at the southern boundary of section 17.

(5) Then northeast along Newton Mountain Way, following the southeastern ridgeline of Newton Canyon, to an unnamed, unimproved dirt road referred to by the petitioner as Castro Mountain Way in section 16.

(6) Then west along Castro Mountain Way, past Castro Peak, following the northern ridgeline of Newton Canyon to Latigo Canyon Road in section 18.

(7) Then southwest along the natural ridgeline of Newton Canyon to the intersection of Kanan Dume Road and the 1,600 foot contour line in the southeastern portion of section 13.

(8) Then southeasterly along Kanan Dume Road to the beginning point.

Signed: December 11, 1995.

Daniel R. Black,

Acting Director.

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ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

Accessibility Guidelines for Play Facilities

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of intent to form a regulatory negotiation committee.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) proposes to establish a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly