

options that would minimize any significant impact of a rule on small entities. As unclassified devices, these devices are already subject to general controls such as premarket notification. The premarket notification guidance document will not substantially change the way in which these devices are regulated. The agency therefore certifies that this proposed rule, if issued, will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of \$100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

#### XI. Paperwork Reduction Act of 1995

This proposed rule does not contain information collection provisions that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### XII. Submission of Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments regarding this proposal by May 8, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

#### XIII. Proposed Dates

FDA proposes that any final regulation based on this proposal become effective 30 days after its publication in the **Federal Register**.

#### XIV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Wright Medical Technology, Inc., Arlington, TN, Classification Proposal and Summary of Safety and Effectiveness Information for the OsteoSet™ Calcium Sulfate Bone Void Filler, received December 12, 1997.

2. Transcript of the Orthopedic and Rehabilitation Devices Panel meeting, January 12 and 13, 1998, pp. 1–10 and 299–372.

#### List of Subjects in 21 CFR Part 888

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 888 be amended as follows:

#### PART 888—ORTHOPEDIC DEVICES

1. The authority citation for 21 CFR part 888 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 888.3045 is added to subpart D to read as follows:

#### § 888.3045 Resorbable calcium salt bone void filler device.

(a) *Identification.* A resorbable calcium salt bone void filler device is a resorbable implant intended to fill bony voids or gaps, caused by trauma or surgery, that are not intrinsic to the stability of the bony structure.

(b) *Classification.* Class II (special controls). The special control for this device is the FDA guidance document entitled “Class II Special Controls Guidance: Resorbable Calcium Salt Bone Void Filler Device.”

Dated: October 5, 2001.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 02–3017 Filed 2–6–02; 8:45 am]

**BILLING CODE 4160–01–S**

#### DEPARTMENT OF THE TREASURY

#### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Part 9

[Notice No. 936]

RIN: 1512-AA07

#### Yadkin Valley Viticultural Area (2001R–88P)

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms has received a petition proposing the establishment of “Yadkin Valley” as a viticultural area in North Carolina. The proposed viticultural area consists of approximately 1,231,000 acres encompassing all of Surry, Wilkes, Yadkin and portions of Stokes, Forsyth, and Davie counties.

**DATES:** Written comments must be received by April 8, 2002.

**ADDRESSES:** Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O.

Box 50221, Washington, DC 20091–0221; (ATTN: Notice No. 936). To comment by facsimile or e-mail, see the “Public Participation” section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Tim DeVanney, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–8210.

#### SUPPLEMENTARY INFORMATION:

#### Background on Viticultural Areas

#### *What Is ATF’s Authority To Establish a Viticultural Area?*

The Bureau of Alcohol, Tobacco and Firearms (ATF), as the delegate of the Secretary of the Treasury, has authority under the Federal Alcohol Administration Act, 27 U.S.C. 205(e), to prescribe regulations that insure that alcohol beverages are labeled or marked to “provide the consumer with adequate information as to the identity” of the products.

ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) on August 23, 1978. This decision revised the regulations in 27 CFR part 4, Labeling and Advertising of Wine, to 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 in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692), which added 27 CFR part 9, American Viticultural Areas, the listing of approved viticultural areas, the names of which may be used as appellations of origin.

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

Section 4.25a(e)(1), title 27 CFR, defines a viticultural area as a delimited grape-growing region distinguishable by geographical features. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

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

Any interested person may petition ATF to establish a grape growing region as a viticultural area. The petition must include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

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

- 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

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

### Yadkin Valley Petition

ATF received a petition from Ms. Patricia McRitchie on behalf of Shelton Vineyards, Inc., Dobson, North Carolina, proposing to establish a viticultural area within the State of North Carolina, to be known as "Yadkin Valley." The viticultural area encompasses Surry, Wilkes, and Yadkin counties and portions of Stokes, Forsyth, and Davie counties, all in North Carolina. The proposed viticultural area is located entirely within the Yadkin River watershed.

The proposed area encompasses approximately 1,924 square miles or 1,231,000 acres. Within these boundaries, there are over 30 growers that devote approximately 350 acres to the cultivation of wine grapes. Currently, there are three bonded wineries and at least two other wineries under construction.

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

According to the petitioner, the proposed viticultural area has been known as the Yadkin Valley since pre-colonial times. The first written historical appearance of the name Yadkin (also referred to as Yattken or Yattkin) was in 1674 in the writing of an early trader, Abraham Wood, whose English scouts passed through the area in 1673. It was used in reference to the Native American tribe found living along the river known as Yadkin. Subsequently, the name Yadkin was applied to many natural features and man-made structures in the area. In fact, the only references to Yadkin as a place name are to places located in North Carolina: Yadkin Valley, the Yadkin River, Yadkin County, the towns of Yadkin Falls, Yadkin College, and Yadkinville. It is also used to name businesses, schools, and organizations located in the northwestern piedmont of the State.

The petitioner states that there is rich historical and anthropological evidence of settlement and cultivation in the

Yadkin Valley. Native American settlements date back to approximately 500 B.C. The first non-Native settlers, the Moravians, arrived in the Yadkin Valley in the 1740's. They originally scouted land in the Blue Ridge Mountains near Boone, but did not find a satisfactory site for settlement. The Moravians followed the Yadkin River east, finally reaching the three forks of the Muddy Creek, a tributary of Yadkin River. It was here that the first of these settlements were made in what are now Forsyth and Stokes counties. These settlements were Bethabara, established in 1753, and Bethania, established in 1759. Bethabara was a fortified settlement built to protect early settlers from attacks by Indians who would sweep down into the Yadkin Valley from the Blue Ridge Mountains during the French and Indian War. The Moravians were meticulous recordkeepers and references to the Yadkin Valley can be found in pre-colonial writings as well as in later resources.

The petitioner contends that references to the Yadkin Valley can be found in histories of the region during the American Revolution and the Civil War periods. Two of the best known Revolutionary battles in the Yadkin Valley are the Whig victories at Kings Mountain and the Battle of Shallow Ford. According to Ann Brownlee, in "The Battle of Shallow Ford" (12/1/96, 2/24/01 <http://www.velocenet.net/shallowford/battle.htm>), these battles were believed to have "turned the tide of the War for Independence in North Carolina to the Patriots' advantage."

The petitioner states that the period immediately after the Civil War was highlighted by a steady influx of settlers into the Yadkin Valley and was characterized by subsistent farming on its rich soils. Toward the latter part of the 19th century, the focus was on cotton and tobacco. By the early 20th century, the change to tobacco as a cash crop was secure. At the close of the 20th century, the predominance of tobacco growing in the northwest piedmont of North Carolina waned. In its place is an increased interest in grape growing, which is rooted in pre-colonial North Carolina.

The petitioner states that, in an article titled "N.C. Winery History" (North Carolina Grape Council Web site, 2/24/01, <http://www.ncagr.com/markets/commodit/horticult/grape/winehist.htm>), the first cultivated wine grape in the United States was grown in North Carolina. The first known recorded account of the scuppernong grape is found in the logbook of explorer Giovanni de Verranzano. He wrote in

1524, "Many vines growing naturally there [in North Carolina] that would no doubt yield excellent wines."

The wine industry in North Carolina thrived through the 19th and 20th centuries until prohibition. At that time, the industry, which was centered in the eastern part of the State, was based on muscadine wine.

The petitioner contends that one of the first modern major plantings of vinifera grapes in North Carolina occurred in 1972, when Jack Kroustalis established Westbend Vineyards, located in the Yadkin Valley. According to "Carolina Wine Country", "[t]he vines flourished in the rich soil of the Yadkin River Valley." In 1988, Kroustalis built the first bonded winery in the Yadkin Valley. Other growers in Yadkin Valley took note of Westbend Vineyard's success with vinifera grapes and followed suit. By the end of 2000, over 350 acres of grapes were planted in the Yadkin Valley. The North Carolina Department of Agriculture has recognized this area as a "unique and valuable winegrowing region."

In 1999, Shelton Vineyards began planting 200 acres of vinifera grapes on land considered perfectly suited to vinifera grape growing. The following year, they opened a state-of-the-art 30,000 case winery. There are currently two wineries under construction in the proposed viticultural area. The Yadkin Valley Wine Grower's Cooperative was recently incorporated.

In 1999, Surry Community College began offering continuing education viticulture courses. Spurred by the tremendous interest in grape growing, the College initiated a two-year viticulture program, which began in the fall of 2000. The program was designed with the intent of educating future grape growers to take advantage of the favorable growing environment provided by the Yadkin Valley. In December of 2000, the Golden Leaf Foundation awarded the College over \$130,000 to support the establishment of a demonstration vineyard and winery for use by students in the program. The petitioner contends that this provides further evidence and recognition of the promise that Yadkin Valley holds as a valuable and distinct viticultural area.

Reference materials used to prepare this petition consistently include the entire counties of Wilkes, Surry, and Yadkin in the Yadkin Valley, as well as portions of Stokes and Forsyth Counties. Davie and Iredell Counties are also commonly included. However, the petitioner contends that, for reasons discussed in the following section of the petition, Iredell County and the southern portion of Davie County

should not be included in the proposed Yadkin Valley viticultural area.

The foregoing is evidence that Yadkin Valley is locally and nationally known as encompassing the area proposed by this petition.

#### *What Evidence Relating to Geographical Features Has Been Provided?*

##### Soil

The information in this section was prepared by Roger J. Leab, Soil Scientist, Natural Resource Conservation Service, United States Department of Agriculture. Mr. Leab was Soil Survey Project Leader for Surry County and Stokes County. He is currently the Soil Survey Project Leader for Alamance County. The soil information was compiled from the published soil surveys of Wilkes, Stoke, Yadkin, Davie, and Forsyth Counties and the data collected for the soon-to-be-published soil survey of Surry County.

The soils of the proposed Yadkin Valley viticultural area are formed mainly from residuum (saprolite) weathered from felsic metamorphic rocks (gneisses, schists, and phyllites) of the Blue Ridge Geologic Belt and the Smith River Allochthon and from metamorphosed granitic rocks of the inner Piedmont Belt. The extreme southeastern part of the area is formed from saprolite weathered from igneous intrusive rocks (granites, gabbros and diorites) and some gneisses and schists, all of the Charlotte Belt.

Most of the proposed viticultural area is in the mesic soil temperature regime, which, at a depth of 20 inches, has an average annual soil temperature of 47 to 59 degrees Fahrenheit. The extreme southeastern part of the area is in the thermic temperature regime, which is the 59 to 72 degree Fahrenheit range.

The dominant soil series formed from residuum in the mesic area are Fairview, Clifford, Woolwine, Westfield, Rhodhiss, and Toast soils. The dominant soil series formed from residuum in the thermic area are Pacolet, Cecil, Madison, Appling, and Wedowee soils. There are also some large areas of soils, which formed in old fluvial sediments of high stream terraces. These are the Braddock series in the mesic area and the Masada, Hiwassee, and Wickham series in the thermic area. These soils all have clayey or fine-loamy subsoils with good internal structure and moderate permeability. They are mostly very deep and well drained. These soils are acidic and have low natural fertility, requiring a well-structured fertility plan.

The soil series that formed in residuum from the mafic intrusive rocks

(gabbros and diorites), which occur scattered along the extreme southeastern part of the proposed viticultural area, have slightly better natural fertility. However, they have subsoils with mixed mineralogy clays. The Gaston and Mecklenburg series have moderate or moderately slow permeability and are suitable to moderately suitable for viticulture. However, the Enon and Iredell series have high shrink-swell clayey subsoils, which perch water during wet periods and result in less than desirable internal drainage.

The less than desirable, high shrink-swell clayey soils are more abundant to the south and east of the proposed viticultural area. The Blue Ridge Mountains are to the west and north of the proposed area. The petitioner contends that these limitations define the Yadkin Valley as a unique viticultural area.

##### Climate

Data for precipitation, temperature and heat summation were provided by the State Climate Office of North Carolina.

*Hardiness Zone.* The proposed viticultural area is in Zone 7a of the USDA Hardiness Zone Map. The surrounding areas are in Zones 6b and 7b. This zone is well suited for growing grapes while the adjacent zones are not as favorable for growing vinifera grapes. For example, the Columbia Valley viticultural area in Washington State is also located in Zone 7a.

The Yadkin Valley is located in the warm temperate latitude between 36°00' and 36°30' N. This is an area well suited to growing vinifera grapes while latitudes below 35°00' are not suited to vinifera grape growing, according to Gordon S. Howell and Timothy K Mansfield's article, "Microclimate and the Grapevine: Site Selection for Vineyards (A Review)," in "Vinifera Wine Growers Journal," Fall 1977, 373.

*Precipitation.* The Yadkin Valley has an average rainfall of 46.42 inches. The area to the west and northwest receives, on average, more than 68 inches of rain per year. The area to the south and east receives, on average, 43.37 inches of rain per year. In general, the Yadkin Valley receives less precipitation than the area to the west and northwest and slightly more than the areas to the south and the east.

*Temperature.* The Yadkin Valley has average maximum annual temperatures of 69.85 degrees Fahrenheit and average minimum annual temperatures of 44.90 degrees Fahrenheit. The area to the west-northwest has an average maximum temperature of 58.6 degrees Fahrenheit and an average minimum

annual temperature of 40.00 degrees Fahrenheit. The area to the east has an average maximum annual temperature of 68.4 degrees Fahrenheit and an average minimum annual temperature of 46.0 degrees Fahrenheit. The area to the south has an average maximum annual temperature of 71.5 degrees Fahrenheit and an average minimum annual temperature of 48.1 degrees Fahrenheit.

In summary, the Yadkin Valley is much warmer than the area to the west and northwest and has slightly higher maximum and minimum temperatures than the area to the east. The Yadkin Valley has lower maximum and minimum temperatures than the area to the south. Temperature differences become more pronounced the further south one travels. In addition, as you proceed east past the Greensboro area, the temperatures, both maximum and minimum, become warmer than in the proposed viticultural area.

*Heat Summation.* Using Amerine and Winkler heat summation definitions, the proposed viticultural area is in climatic region IV, with 3743 degree-days. The areas to the east are in region IV. The area to the west-northwest is in region I, and the area to the south is in region V (Greensboro, NC is close to region V).

The data for the following analyses are taken from the North Carolina State University Horticulture Information Leaflet "Average Growing Season for Selected North Carolina Locations" (12/96, revised 12/98) by Katharine Perry.

*Frost-Free Season/Growing Season.* The proposed viticultural area enjoys a frost-free season lasting from April 22 to October 15. This is a growing season of 176 days and is two to four weeks longer than the region to the west. The frost-free/growing season in the proposed viticultural area is similar to the area immediately to the south. In contrast, the regions to the east-southeast have a frost-free and growing season four to six weeks longer than the proposed viticultural area.

*Climate Summary.* The proposed viticultural area has more moderate temperatures and precipitation than the surrounding areas. The growing season and frost-dates fall within the optimum range for cultivation of premium vinifera grapes. These data support the proposition that the Yadkin Valley possesses climatic conditions distinguishing it from the surrounding areas.

##### Geology

Matthew Mayberry, Chairman/President, River Ridge Land Company, Inc., provided the following geological commentary.

The rocks and subsequent soils of the Blue Ridge and Piedmont Physiographic Provinces of the proposed viticultural area have origins extending back to the early formation of the earth's continental landmasses. Some rocks of the subject area have been dated to approximately 1.8 billion years old.

The geologic history is tremendously complex and involves plate tectonics (continental drift, continental collisions, subduction zones, intercontinental deformations) and the whole spectrum of uplifting and erosional wearing down for the entire mountain building cycle. Each of these cycles required several hundred million years during which the ongoing uplift and erosional wearing down processes were constantly active. The erosional cycle gradually reduces land surfaces from mountains to relatively level surfaces, gently sloping toward a depositional basin (ocean/sea). Geological evidence indicates at least three complete tectonic cycles, the last of which involved a collision and later separation of the Euro African Plate with the North American Plate. This produced a mountain range approximating the present day Andes Mountains of South America and eventually resulted in the creation of the Atlantic Ocean and the present day plate positions.

During a period of three hundred million years, following the build up of this original Appalachian Mountain system, the forces of weather and erosion have likely removed thousands of meters of rock with the resulting Piedmont and Blue Ridge surfaces of today. Evidence of three erosional cycles is represented by present day mountain peaks, e.g., Mount Mitchell in North Carolina and Mount Rogers in Virginia. These peaks represent the oldest leveling cycle. The peaks of Kings Mountain, Pilot Mountain, Sauratown Mountain and the ridges of the Blue Ridge system represent the next erosional cycle. This middle cycle is definitely an older cycle (400,000,000 years) than the present-day Piedmont and Coastal Plain, which represent the third leveling cycle with their gentle sloping surface to the Atlantic Ocean. A current hypothesis is that the Appalachian Mountains and Piedmont are in a cycle where uplift is exceeding erosion by about 100 feet per 1,000,000 years for the Appalachian system of today.

The highly complex rocks of the present day Blue Ridge and Piedmont provinces represent a core area that has been present and re-crystallized and re-metamorphosed through several of these mountain building cycles to produce the complex schists, gneisses and igneous

rocks of today. Relics of a couple of the hot spots that re-crystallized rock are the granites of Mount Airy and Stone Mountain, North Carolina. The weathering of these Piedmont rocks has produced soils with chemical and physical properties that are very amenable to the viticulture industry. These soils and the climate of the proposed Yadkin Valley viticultural area cover a spectrum that is equal to most vineyards of Europe and California.

After the Yadkin River's origin and descent from mountain springs in the Blowing Rock, North Carolina area, it encounters a major structural feature known as the Brevard Shear Zone (fault system), which also defines the Blue Ridge Escarpment in the area, paralleled by the river. At the base of the Blue Ridge Escarpment, the Yadkin River turns and flows northeastward under the structural control of this shear zone for a distance of approximately 50 miles before bending to the east between the northeast end of the Brushy Mountains and Pilot Mountain. At the Surry, Yadkin, and Forsyth County corner, the Yadkin turns southward and later becomes the Pee Dee River at High Rock Lake, about six miles northwest of Salisbury, North Carolina.

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

Matthew Mayberry, Chairman/President, River Ridge Land Company, Inc. provided the boundary description.

The area of the proposed Yadkin Valley viticultural area covers approximately 1,924 square miles or 1,231,000 acres in Wilkes, Surry, Yadkin and parts of Stokes, Forsyth, and Davie counties. The subject area is identified on two 1:250,000 scale USGS maps:

- (1) Winston-Salem, N.C.; VA., Tenn. 1953 Limited Revision 1962 and,
- (2) Charlotte, North Carolina; South Carolina 1953 Revised 1974.

The proposed Yadkin Valley viticultural area boundary is defined as a series of compass bearings and corresponding distances determined with a protractor and a 1:250,000 scale, based on and read from the U.S.G.S. maps. Primarily, the proposed viticultural area is defined by county lines. In cases where directions change, where county lines are too irregular to measure, a "trend direction bearing" with straight-line miles is reported. The beginning point is defined as a point 3.6 miles west of the northeast corner of Surry County on the Surry County and North Carolina/Virginia state line at the crest of Slate Mountain.

The boundaries of the proposed Yadkin Valley viticultural area are more particularly discussed in proposed § 9.174 (c) of the regulations, as identified below in this Notice.

#### **Regulatory Analyses and Notices**

##### *Is This a Significant Regulatory Action as Defined in Executive Order 12866?*

This regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposed rule is not subject to the analysis required by this Executive Order.

##### *How Does the Regulatory Flexibility Act Apply to This Proposed Rule?*

The proposed regulations will not have significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement or 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. We believe that the establishment of viticultural areas allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify various wines. 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. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

##### *Does the Paperwork Reduction Act Apply to This Proposed Rule?*

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 proposed rule because no requirement to collect information is proposed.

#### **Public Participation**

##### *Who May Comment on This Notice?*

ATF solicits comments from all interested parties. ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. 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. Assurance of consideration can only be given to comments received on or before the closing date.

Copies of this petition, the proposed regulations, the appropriate maps, and any written comments received may be viewed by appointment at the ATF Reference Library, Office of Liaison and

Public Information, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone (202) 927-7890. To receive copies of comments, you must file a Freedom of Information Act (FOIA) request. For instructions on filing a FOIA request, call (202) 927-8480 or refer to the internet address: <http://www.atf.treas.gov/about/foia/foia.htm>.

For the convenience of the public, ATF will post comments received in response to this notice on the ATF web site. All comments posted on our web site will show the name of the commenter. Street addresses, telephone numbers, and e-mail addresses are removed. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the library or through FOIA requests, as noted above. To access online copies of the comments on this rulemaking, visit <http://www.atf.treas.gov/>, and select "Regulations," then "Proposed rules" and this notice. Click on the "view comments" button.

#### *Will ATF Keep My Comments Confidential?*

ATF will not recognize any comment as confidential. All comments and materials will be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, do not include it in the comments. We will also disclose the name of any person who submits a comment.

During the comment period, any person may request an opportunity to present oral testimony at a public hearing by writing the Director within the 60-day comment period. However, the Director reserves the right to determine whether a public hearing will be held.

#### *How Do I Send Facsimile Comments?*

To submit facsimile transmissions, use (202) 927-8525. Facsimile comments must:

- Be legible.
- Reference this notice number.
- Be on paper 8½ × 11" in size.
- Contain a legible written signature.
- Not be more than three pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

#### *How Do I Send Electronic Mail (E-Mail) Comments?*

To submit comments by e-mail, send the comments to: [nprm@atfhq.atf.treas.gov](mailto:nprm@atfhq.atf.treas.gov). You must follow these instructions.

E-mail comments must:

- Contain your name, mailing address, and e-mail address.
- Reference this notice number.
- Be legible when printed on no more than three pages, 8½ × 11" in size.

We will not acknowledge receipt of e-mail. E-mail comments are treated as originals.

#### *How Do I Send Comments to the ATF Internet Web Site?*

There is a comment form provided with the online copy of the proposed rule on the ATF internet web site at: <http://www.atf.treas.gov>.

#### **Drafting Information**

The principal author of this document is Tim DeVaney, Regulations Division, 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**

**Paragraph 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 § 9.174 to read as follows:

\* \* \* \* \*

#### **§ 9.174 Yadkin Valley.**

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

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Yadkin Valley viticultural area are two United States Geological Survey (U.S.G.S.) topographic maps, scale 1:250,000:

(1) Winston-Salem, N.C.; VA; Tenn. (1953, Limited Revision 1962), and,

(2) Charlotte, North Carolina; South Carolina. (1953, Revised 1974).

(c) *Boundaries.* The Yadkin Valley viticultural area is located in the state of North Carolina within Wilkes, Surry, Yadkin and part of Stokes, Forsyth, and Davie Counties. The boundaries are as follows:

(1) Beginning with the Winston-Salem, N.C.; VA; Tenn. map, the beginning point is 3.6 miles west of the northeast corner of Surry County on the

Surry County and North Carolina/Virginia state line. From the beginning point, proceed south 25.5 degrees east, this boundary line follows the Yadkin River Basin boundary line, approximately 8.0 miles, to the intersection of the Surry/Stokes County line;

(2) Then follow the Surry/Stokes County line, approximately 1.5 miles south;

(3) Then bear south 57 degrees east, for approximately 7.8 miles, following the Yadkin River Basin boundary line to Sauratown Mountain peak (at the 2,465 foot contour line);

(4) Then bear northeastward along the Yadkin River Basin boundary line to the Gap (between Sauratown and Hanging Rock Mountains), at the State Route 66/Yadkin River Basin boundary line intersection;

(5) Then bear south, following State Route 66 to the U.S. Route 52/State Route 66 intersection;

(6) Then follow U.S. Route 52 south to Rural Hall, N.C., to the intersection of the Southern Railway track and U.S. Route 52;

(7) Then bear south, following the Southern Railway track to where it intersects with U.S. Route 158;

(8) Then bear southwest, following U.S. Route 158 (onto the Charlotte, North Carolina; South Carolina quadrangle map) to the intersection of U.S. Highway 601/U.S. Route 158 at Mocksville, N.C.;

(9) Then bear northwest, following U.S. Highway 601 (onto the Winston-Salem, N.C.; VA; Tenn. quadrangle map) to the Davie/Yadkin County line;

(10) Then continue west along the Yadkin/Davie County line, to the Yadkin/Davie/Iredell County line intersection, to the Yadkin/Iredell County line, to the Yadkin/Iredell/Wilkes County line intersection, to the Iredell/Wilkes County line, to the Iredell/Wilkes/Alexander County line intersection, to the Wilkes/Alexander County line, to the Wilkes/Alexander/Caldwell County line intersection;

(11) Then bear northwesterly along the Wilkes/Caldwell County line, to the Wilkes/Caldwell/Watauga County intersection;

(12) Then bear northeasterly then northwesterly along the Wilkes/Watauga County line to the intersection of the Wilkes/Watauga/Ashe County lines;

(13) Then alternately bear northeasterly then southeasterly along the Wilkes/Ashe County line, to the Wilkes/Ashe/Alleghany County line intersection;

(14) Then alternately bear northeasterly then southeasterly along the Wilkes/Alleghany County line to the

Wilkes/Alleghany/Surry County line intersection;

(15) Then alternately bear northeasterly then northwesterly and then northeasterly again, along Alleghany/Surry County line to the intersection of the Alleghany/Surry/Grayson County lines at the North Carolina/Virginia border;

(16) Then bear east along the Surry/Grayson County line to the Surry/Grayson/Carroll County line intersection;

(17) Then continue east along the Surry/Carroll County line through the intersection of the Surry/Carroll/Patrick County lines following the Surry/Patrick County/North Carolina/Virginia state line to the beginning point, 3.6 miles west of the northeast corner of Surry County.

Dated: January 23, 2002.

**Bradley A. Buckles,**  
Director.

[FR Doc. 02-2956 Filed 2-6-02; 8:45 am]

BILLING CODE 4810-31-P

## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 201

[Docket No. RM 2002]

#### Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Copyright Office of the Library of Congress is issuing a notice of proposed rulemaking on the requirements for giving copyright owners reasonable notice of the use of their works for sound recordings under statutory license and for how records of such use shall be kept and made available to copyright owners. The Digital Performance Right in Sound Recordings Act of 1995 and the Digital Millennium Copyright Act enacted in 1998 require the Office to adopt these regulations.

**DATES:** Comments are due by March 11, 2002. Reply comments are due by April 8, 2002.

**ADDRESSES:** An original and ten copies of any comment shall be delivered to: Office of the General Counsel, Copyright Office, James Madison Building, Room LM-403, First and Independence Avenue, SE, Washington, DC; or mailed to: Copyright Arbitration Royalty Panel

(CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024-0977.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or Tanya Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024-0977. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Digital Performance Right in Sound Recordings Act of 1995 (DPRA) amended 17 U.S.C. 114 to give sound recording copyright owners an exclusive right to perform their works publicly by means of a digital audio transmission, subject to certain limitations and exemptions. Pub. L. No. 104-39, 109 Stat. 336 (1995). Among the limitations placed on the performance of a sound recording was the creation of a statutory license that permits certain subscription digital audio Services to publicly perform those sound recordings through digital audio transmission. In order to operate under the license, eligible subscription digital audio Services must pay the statutorily required fees and comply with certain other conditions, such as adherence to notice and recordkeeping requirements.

In 1998, Congress passed the Digital Millennium Copyright Act (DMCA), which expanded the scope of the section 114 license. It amended section 114 by adding three new categories of Services that may operate under the license, and by redesignating the subscription Services covered by the DPRA statutory license as "preexisting subscription Services." Pub. L. No. 105-304, 112 Stat. 2860, 2887 (1998). The three new service categories are: (1) Preexisting satellite digital audio radio Services, (2) new subscription Services and (3) eligible nonsubscription transmission Services. The DMCA also amended 17 U.S.C. 112 to add another new license that is available to permit Services to make ephemeral recordings of a sound recording to facilitate the transmissions permitted under section 114.

Both the DPRA and the DMCA direct the Librarian of Congress to establish regulations to require eligible Services to give copyright owners reasonable notice that their sound recordings are being used under one or both of the licenses and create and maintain records of use and make them available to copyright owners. See Secs. 112(e)(4) and 114(f)(4)(A).

#### Interim Rule for Digital Audio Subscription Transmissions

On May 13, 1996, the Copyright Office published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** requesting comments on the requirements by which copyright owners should receive reasonable notice of the use of their works from subscription digital transmission Services and how records of such use should be kept and made available to copyright owners. The Office asked commentators to consider both the adequacy of notice to sound recording copyright owners and the administrative burdens placed on digital transmission Services in providing notice and maintaining records of use. 61 FR 22004 (May 13, 1996).

On November 14, 1996, and again on January 27, 1999, the Copyright Office met with the parties to facilitate agreement on the notice and recordkeeping requirements under section 114, and to discuss the proper regulatory and recordkeeping role of the Office.<sup>1</sup>

Based on the comments filed in response to the first NPRM and the information gleaned from the subsequent meetings, the Copyright Office published a second NPRM on June 24, 1997, presenting certain preliminary decisions and asking the parties for further comments.<sup>2</sup> 62 FR 34035 (June 24, 1997). In 1998, after extensive study, the Copyright Office issued Interim Regulations to implement the notice and recordkeeping requirements for section 114 that were enacted in 1995 as part of the DPRA. 63 FR 34289 (June 24, 1998). 37 CFR 201.35-201.37. The interim rules took effect on June 28, 1998. The rules were issued on an interim basis in light of the rapidly developing nature of the digital transmission Service industry and the possibility that new technology might be developed which would allow the reporting requirements to be either

<sup>1</sup> The comments, meeting summaries, and meeting handouts are available in the Public Information Office of the Copyright Office, James Madison Memorial Building, Room LM-401, First and Independence Ave., SE., Washington, DC.

<sup>2</sup> The version that was published in the **Federal Register** on June 24, 1998 is a synopsis of the Interim Regulation in Docket No. RM 96-3B, adopted June 15, 1998. The full text is available for inspection and copying during normal business hours in the Public Information Office of the Copyright Office, Room LM-401, and in the Public Records Office of the Licensing Division of the Copyright Office, Room LM-458, James Madison Memorial Building, First and Independence Avenue, SE, Washington, DC 20559-6000. The full text is also available via the Copyright Office home page at <http://www.loc.gov/copyright>.