

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

[Docket No. TTB–2011–0005; Notice No. 118]

RIN 1513–AB80

**Proposed Establishment of the Naches Heights Viticultural Area (2009R–107P)****AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the 13,254-acre “Naches Heights” American viticultural area in Yakima County, Washington. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to the Bureau’s regulations.

**DATES:** TTB must receive written comments on or before July 25, 2011.

**ADDRESSES:** You may send comments on this notice to one of the following addresses:

- <http://www.regulations.gov> (via the online comment form for this notice as posted within Docket No. TTB–2011–0005 at “Regulations.gov,” the Federal e-rulemaking portal);
- *U.S. mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or
- *Hand Delivery/Courier:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments TTB receives about this proposal at <http://www.regulations.gov> within Docket No. TTB–2011–0005. A direct link to this docket is posted on the TTB Web site at [http://www.ttb.gov/wine/wine\\_rulemaking.shtml](http://www.ttb.gov/wine/wine_rulemaking.shtml) under Notice No. 118. You also may view copies of this notice, all related petitions, maps or other supporting materials, and any comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

**FOR FURTHER INFORMATION CONTACT:**

Elisabeth C. Kann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; telephone 202–453–2002.

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

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas and lists the approved American viticultural areas.

*Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

*Requirements*

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party

may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations prescribes standards for petitions for the establishment or modification of American viticultural areas. Such petitions must include the following:

- Evidence that the area within the viticultural area boundary is nationally or locally known by the viticultural area name specified in the petition;
- An explanation of the basis for defining the boundary of the viticultural area;
- A narrative description of the features of the viticultural area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make it distinctive and distinguish it from adjacent areas outside the viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the viticultural area, with the boundary of the viticultural area clearly drawn thereon; and
- A detailed narrative description of the viticultural area boundary based on USGS map markings.

**Petition for the Naches Heights Viticultural Area**

TTB received a petition from R. Paul Beveridge, owner of Wilridge Winery and Vineyard, to establish the “Naches Heights” American viticultural area in the State of Washington. The proposed Naches Heights viticultural area is located entirely within the larger Columbia Valley viticultural area (27 CFR 9.74) of Washington and Oregon. The city of Yakima lies to the southeast of the proposed viticultural area in a valley at lower elevations.

According to the petition, the proposed Naches Heights viticultural area encompasses 13,254 acres and contains 105 acres of commercial vineyards either producing or expecting to produce wine grapes in the foreseeable future. Recent plantings include 74 acres in 2009 and 15 acres in 2010, according to the petition, in addition to an earlier 16 acres of wine grape producing vines.

*Name Evidence*

The “Naches Heights” name applies to an elevated plateau area in Yakima County, Washington, according to the petition and USGS maps. The USGS topographical maps of Naches, Selah, Yakima West, and Wiley City are used in the written boundary description in the petition to define the boundary of the proposed viticultural area. The area between the Naches River and Cowiche Creek is identified as “Naches Heights”

on the USGS maps as well as on a public lands map (Yakima Public Lands Quadrangle map, 2001, Washington State Department of Natural Resources), according to the petition.

TTB notes that a search of the USGS Geographical Names Information System (GNIS) describes Naches Heights as a summit in Yakima County, Washington. Also, a general internet search for "Naches Heights" produced many hits relating to the geographical region in which the proposed viticultural area falls.

The petition provided evidence of local usage of the name "Naches Heights," including listings for the "Naches Heights Community Center" and the "Little Store on Naches Heights" in The DexOnline.com, Qwest, 2008 Yakima Valley telephone directory. The petition also included multiple articles from the Yakima Herald-Republic referring to "Naches Heights," including an October 22, 2008, obituary of Albert Robert Couchman, who had worked in orchards in Naches Heights; an October 24, 2008, article about a cross-country competition entitled "Local Report: GNAC's best heading to Naches Heights"; and an October 26, 2008, article entitled "Naches Heights: Senior Marcie Mullen turned in Central Washington University's top performance in Saturday's GNAC cross country championship \* \* \*." In addition, the petition included a 1990 Cowiche Canyon brochure issued by the Bureau of Land Management's Spokane District that contained a drawing showing the Naches Heights geographical area, with Cowiche Canyon to the immediate west at lower elevations.

#### *Boundary Evidence*

According to USGS maps submitted with the petition, the Naches Heights plateau landform is surrounded by lower elevation valleys and the lower Tieton River to the west, the Naches River to the north and east, and Cowiche Creek to the south and west. The man-made Congdon (Schuler) Canal is located along a portion of the proposed eastern boundary line, closely following the 1,300-foot elevation line. TTB notes that these landforms are distinguishable on both the aerial photographs and the USGS maps submitted with the petition.

#### *Comparison of the Proposed Naches Heights Viticultural Area to the Existing Columbia Valley Viticultural Area*

The Columbia Valley viticultural area was established by T.D. ATF-190, published in the **Federal Register** (49 FR 44895) on November 13, 1984. It was

described as a large, treeless basin surrounding the Yakima, Snake, and Columbia Rivers in portions of Washington and Oregon. The topography of the Columbia Valley viticultural area was described as a rolling terrain, cut by rivers and broken by long, sloping, basaltic, east-west uplifts. In addition, T.D. ATF-190 stated that the Columbia Valley viticultural area is dominated by major rivers and has a long, dry growing season. The Naches Heights petition notes that the ancient Missoula Floods carved much of the basin geography within the Columbia Valley AVA.

The proposed Naches Heights viticultural area is 0.001 percent the size of the 11.6 million-acre Columbia Valley viticultural area, within which it is situated. It is a single, elevated Tieton andesite plateau landform that ends in andesite cliffs that descend into the valleys surrounding the plateau. Although this landform is part of the Columbia Valley viticultural area, with which it generally shares a similar climate, it is geographically and geologically distinguishable from the surrounding portions of the Columbia Valley viticultural area, according to the petition. The relatively flat terrain of the plateau gently increases in elevation over the 11 miles from southeast to northwest, as shown on the USGS maps, and the entire plateau is elevated over the surrounding valleys. Unlike the rest of the Columbia Valley, no major rivers cross the plateau landscape, although it contains several intermittent streams and small ponds.

#### *Distinguishing Features*

The petition states that geology, geography, and soils distinguish the proposed viticultural area from the surrounding areas.

#### *Geology*

The petition states that approximately one million years ago, the termination of andesite flow from the Cascade Mountains down the valley of the Tieton River formed the Naches Heights plateau. The proposed Naches Heights viticultural area is located on, and encompasses, a geological formation of Tieton andesite, a volcanic rock.

According to the petition, in contrast to the Naches Heights plateau, there are alluvial deposits, including those that are terraced and older, to the north, east, and south of the proposed viticultural area. To the west of the area are alluvial deposits and Grande Ronde Basalt, Ringold Formation gravels, the Ellensburg Formation, and the Cascade Mountains.

#### *Geography*

The petition states that the proposed Naches Heights viticultural area is a plateau that terminates in cliffs of andesite to the north, east, and south. The andesite cliffs distinguish the proposed viticultural area from the Naches River Valley, the Cowiche Creek Valley, and the nearby Yakima River Valley. The USGS maps show that the Naches Heights plateau is elevated in comparison to the surrounding river and creek valleys. Aerial photos submitted with the petition also show the Naches Heights plateau landform and the cliffs that surround it in contrast with the surrounding lower elevation valleys.

On the far west side of the proposed viticultural area, the andesite cliffs are subsumed by the foothills of the Cascade Mountains, according to the petition and the USGS maps. Although not distinguished by steep cliffs, the proposed western boundary line marks the end of andesite rocks and the beginning of the Cascade Mountains foothills, as shown in an aerial photo submitted with the petition. Elevations gradually rise heading west and northwest of the Naches Heights into the Cascade Mountains and the 3,578-foot Bethel Ridge. The high mountainous elevations to the west create a rain shadow effect that protects the Naches Heights plateau from Pacific winter storms.

Elevations on the Naches Heights and along the Tieton andesite cliffs also distinguish the plateau from the surrounding regions, according to the petition. As explained in the petition, cold air drains off the plateau and into the surrounding valleys, thereby reducing potential frost damage and winterkill to vineyards on the Naches Heights. The lowest elevations of the proposed viticultural area are approximately 1,200 feet, which is at the tip of the andesite flow at the far eastern edge of the proposed viticultural area. From this point, the cliffs rise to 1,400 feet, according to the USGS maps. The highest elevation of the plateau, located near the far western end of the proposed viticultural area, is approximately 2,100 feet, at which point the cliffs drop immediately to 1,600 feet. The Yakima City Hall lies to the southeast of the proposed viticultural area at 1,061 feet, a significantly lower elevation than that of the Naches Heights.

#### *Soils*

After the volcanic flow of andesite cooled and hardened to form the Naches Heights plateau, pockets of loess, or wind-blown soil, were deposited on the

plateau, according to the petition. After a period of about 1 million years marked by winds and volcanic eruptions in the Cascades, deep beds of unique soils formed in the loess pockets on the plateau. The predominant soils on the plateau are Tieton loam and Ritzville silt loam (U.S. Department of Agriculture, National Resource Conservation Service, Web Soil Survey at <http://websoilsurvey.nrcs.usda.gov/>). According to the petition, the only major difference between Tieton loam and Ritzville silt loam is that the latter formed in deeper pockets of loess, thus creating a very consistent soil type throughout the proposed viticultural area.

The Naches Heights plateau landform, according to the NRCS web soil survey, has generally deep loess soils with adequate drainage and deep rooting depths conducive to successful viticulture. Further, the grape vine roots are not prone to freezing, or winterkill, in the deep plateau soils.

Unlike the plateau, much of the greater Columbia Valley region that surrounds the Naches Heights was covered by alluvial material deposited by the ancient Missoula Floods, according to the petition. Hence, the proposed viticultural area is surrounded mainly by gravelly alluvial soils readily distinguishable from the Tieton loam and Ritzville silt loam of Naches Heights. Harwood loam, a transitional soil formed in both loess and alluvium, is located in small areas of the southern portion of the Naches Heights that is outside the boundary line of the proposed viticultural area.

Rocks, cobbles, and shallow rooting depths are characteristics of the lower elevation valley region that surrounds the Naches Heights plateau, according to the NRCS data. In the valley region, the cold air from the surrounding mountain elevations drains onto the valley floor and ponds to create stagnant, cold air environments that make vine growth difficult during some seasons, the petition explains. Unlike the Naches Heights soils, the valley and floodplain soils, including the Weirman, Wenas, and Kittitas series, are subject to seasonal flooding and a water table close to the surface of the soil, according to NRCS data. In addition, the valley vines have shallow rooting depths that can reach the water table and be frozen during extreme cold weather. Further, seasonal flooding can affect some portions of the surrounding valley area.

#### **TTB Determination**

TTB concludes that the petition to establish the 13,254-acre "Naches Heights" American viticultural area

merits consideration and public comment as invited in this notice.

#### *Boundary Description*

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

#### *Maps*

The petitioner provided the required maps, and TTB lists them below in the proposed regulatory text.

#### **Impact on Current Wine Labels**

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If TTB establishes this proposed viticultural area, its name, "Naches Heights," will be recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using "Naches Heights" in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

On the other hand, TTB does not believe that any single part of the proposed viticultural area name standing alone, such as "Naches," would have viticultural significance if the new area is established. Accordingly, the proposed part 9 regulatory text set forth in this document specifies only the full "Naches Heights" name as a term of viticultural significance for purposes of part 4 of the TTB regulations.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term of viticultural significance appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a previously approved label uses the name "Naches

Heights" for a wine that does not meet the 85 percent standard, the previously approved label will be subject to revocation upon the effective date of the approval of the Naches Heights viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

#### **Public Participation**

##### *Comments Invited*

TTB invites comments from interested members of the public on whether the Bureau should establish the proposed Naches Heights viticultural area. TTB is interested in receiving comments on the sufficiency and accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. TTB is also interested in any comments on whether the evidence regarding name and distinguishing features is sufficient to warrant the establishment of this new viticultural area within the existing Columbia Valley viticultural area. In addition, TTB is interested in comments regarding whether the geographical features of the proposed viticultural area are so distinguishable from the surrounding Columbia Valley viticultural area that the proposed Naches Heights viticultural area should no longer be part of the Columbia Valley viticultural area. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Naches Heights viticultural area on wine labels that include the words "Naches Heights" as discussed above under "Impact on Current Wine Labels," TTB is also particularly interested in comments regarding whether there will be a conflict between the proposed viticulturally significant term and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example by adopting a modified or different name for the viticultural area.

##### *Submitting Comments*

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

• *Federal e-Rulemaking Portal*: You may send comments via the online comment form posted with this notice in Docket No. TTB–2011–0005 on “Regulations.gov,” the Federal e-rulemaking portal, at <http://www.regulations.gov>. A direct link to that docket is available under Notice No. 118 on the TTB Web site at [http://www.ttb.gov/wine/wine\\_rulemaking.shtml](http://www.ttb.gov/wine/wine_rulemaking.shtml). Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on “User Guide” under “How to Use this Site.”

• *U.S. Mail*: You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

• *Hand Delivery/Courier*: You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 118 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity’s name as well as your name and position title. If you comment via <http://www.regulations.gov>, please enter the entity’s name in the “Organization” blank of the comment form. If you comment via mail, please submit your entity’s comment on letterhead.

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

#### Confidentiality

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

#### Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, TTB will post, and you may view, copies of this notice, selected

supporting materials, and any electronic or mailed comments TTB receives about this proposal. A direct link to the Regulations.gov docket containing this notice and the posted comments received on it is available on the TTB Web site at [http://www.ttb.gov/wine/wine\\_rulemaking.shtml](http://www.ttb.gov/wine/wine_rulemaking.shtml) under Notice No. 118. You may also reach the docket containing this notice and the posted comments received on it through the Regulations.gov search page at <http://www.regulations.gov>.

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

You also may view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact TTB’s information specialist at the above address or by telephone at 202–443–2270 to schedule an appointment or to request copies of comments or other materials.

#### Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor’s efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

#### Executive Order 12866

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

#### Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this notice.

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

Wine.

#### Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

#### PART 9—AMERICAN VITICULTURAL AREAS

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

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

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

#### Subpart C—Approved American Viticultural Areas

##### § 9.\_\_\_\_ Naches Heights.

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

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

- (1) Selah, Wash., 1958, photorevised 1985;
- (2) Yakima West, Wash., 1958, photorevised 1985;
- (3) Wiley City, Wash., 1958, photorevised 1985;
- (4) Naches, Wash., 1958, photorevised 1978; and
- (5) Tieton, Wash., 1971, photoinspected 1981.

(c) *Boundary*. The Naches Heights viticultural area is located in Yakima County, Washington. The boundary of the Naches Heights viticultural area is as described below:

(1) The beginning point is on the Selah map at the intersection of the Burlington Northern single-track rail line and the Congdon (Schuler) Canal, section 9, T13N/R18E. From the beginning point, proceed south-southwesterly along the single rail line, onto the Yakima West map, 0.35 mile to the rail line’s first intersection with an unnamed creek, locally known as Cowiche Creek, section 9, T13N/R18E; then

(2) Proceed upstream (westerly) along Cowiche Creek, onto the Wiley City map and then onto the Naches map, approximately 6.25 miles to the confluence of the North and South Forks of Cowiche Creek, south of Mahoney Road, section 3, T13N/R17E; then

(3) Proceed upstream (northwesterly) along the North Fork of Cowiche Creek approximately 1.6 miles to the North Fork’s intersection with Livengood Road, section 34, T14N/R17E; then

(4) Proceed north and northwest on Livengood Road until it turns west and joins Forney Road, and continue 2.1 miles along Forney Road to the road’s intersection with the North Fork of

Cowiche Creek, section 28 northwest corner, T14N/R17E; then

(5) Proceed upstream (northwesterly) along the North Fork of Cowiche Creek approximately 1.8 miles to the North Fork's intersection with the section 17 west boundary line, T14N/R17E; then

(6) Proceed straight north along the section 17 west boundary line to its intersection with Cox Road and then continue north along Cox Road to its intersection with Rosenkranz Road, section 17 northwest corner, T14N/R17E; then

(7) Proceed west on Rosenkranz Road, onto the Tieton map, 0.6 mile to the road's intersection with North Tieton Road, section 7 south boundary line, T14N/R17E; then

(8) Proceed north on North Tieton Road 0.5 mile to the road's intersection with Dilley Road, section 7, T14N/R17E; then

(9) Proceed west on Dilley Road 0.5 mile to the road's intersection with Franklin Road, section 7 west boundary line and the R16E and R17E common line, T14N; then

(10) Proceed north on Franklin Road 0.8 mile to the road's intersection with Schenk Road and the section 6 west boundary line, T14N/R16E; then

(11) Proceed west on Schenk Road 0.55 mile to the road's intersection with Section 1 Road, section 1, T14N/R16E; then

(12) Proceed straight north from the intersection of Schenk Road and Section 1 Road 2.2 miles to the 1,600-foot elevation line, section 36, T15N/R16E; then

(13) Proceed easterly and then southeasterly along the 1,600-foot elevation line, onto the Naches map, approximately 7.5 miles to the 1,600-foot elevation line's intersection with the section 26 north boundary line, T14N/R17E; then

(14) Proceed straight east along the section 26 north boundary line 0.25 mile to the section 26 north boundary line's intersection with the 1,400-foot elevation line, T14N/R17E; then

(15) Proceed southeasterly along the 1,400-foot elevation line approximately 2.5 miles to 1,400-foot elevation line's intersection with Young Grade Road, section 31, T14N/R18E; then

(16) Proceed east in a straight line 0.15 mile to the Congdon (Schuler) Canal, which closely parallels the 1,300-foot elevation line, section 31, T14N/R18E; and then

(17) Proceed southeasterly along the Congdon (Schuler) Canal, onto the Selah map, approximately 3.25 miles, returning to the point of beginning, section 9, T13N/R18E.

Signed: April 29, 2011.

**John J. Manfreda,**

*Administrator.*

[FR Doc. 2011-12820 Filed 5-23-11; 8:45 am]

**BILLING CODE 4810-31-P**

## **OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

### **29 CFR Part 2205**

#### **Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Occupational Safety and Health Review Commission**

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Occupational Safety and Health Review Commission ("OSHRC") is proposing revisions to part 2205, which it promulgated to implement section 504 of the Rehabilitation Act of 1973, as amended. These proposed revisions account for statutory and regulatory changes, and incorporate procedures for filing complaints under section 508 of the Rehabilitation Act of 1973, as amended. OSHRC is also proposing various corrections and technical amendments to this part.

**DATES:** Comments must be received by OSHRC on or before June 23, 2011.

**ADDRESSES:** You may submit comments by any of the following methods:

- *E-mail:* [regsdoCKET@oshrc.gov](mailto:regsdoCKET@oshrc.gov). Include "PROPOSED RULEMAKING, PART 2205" in the subject line of the message.

- *Fax:* (202) 606-5417.

- *Mail:* One Lafayette Centre, 1120 20th Street, NW., Ninth Floor, Washington, DC 20036-3457.

- *Hand Delivery/Courier:* same as mailing address.

**Instructions:** All submissions must include your name, return address and e-mail address, if applicable. Please clearly label submissions as "PROPOSED RULEMAKING, PART 2205." If you submit comments by e-mail, you will receive an automatic confirmation e-mail from the system indicating that we have received your submission. If, in response to your comment submitted via e-mail, you do not receive a confirmation e-mail within five working days, contact us directly at (202) 606-5410.

**FOR FURTHER INFORMATION CONTACT:** Ron Bailey, Attorney-Advisor, Office of the General Counsel, by telephone at (202) 606-5410, by e-mail at [rbailey@oshrc.gov](mailto:rbailey@oshrc.gov), or by mail at: 1120

20th Street, NW., Ninth Floor, Washington, DC 20036-3457.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Section 508 of the Rehabilitation Act requires federal agencies that develop, procure, maintain, or use electronic and information technology to "ensure, unless undue burden would be imposed on the department or agency," that this technology allows (1) federal employees who are individuals with disabilities "to have access to and use of information and data that is comparable to the access to and use of the information and data by Federal employees who are not individuals with disabilities," and (2) members of the public who are individuals with disabilities and are "seeking information or services from a Federal department or agency to have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities." 29 U.S.C. 794d(a)(1)(A). In the event that this requirement imposes an undue burden, federal agencies must provide the relevant information and data using an "alternative means." 29 U.S.C. 794(a)(1)(B). An administrative complaint filed for an alleged violation of section 508 of the Rehabilitation Act must be filed with the agency "alleged to be in noncompliance," and must be processed by the agency using "the complaint procedures established to implement" section 504 of the Rehabilitation Act. 29 U.S.C. 794d(f)(2). Therefore, OSHRC is proposing to amend its procedures in part 2205, which effectuates section 504, to also incorporate the requirements set forth in section 508.

Exercising its statutory authority under section 508 of the Rehabilitation Act, 29 U.S.C. 794(a)(2), the Architectural and Transportation Barriers Compliance Board ("Access Board") has issued standards for electronic and information technology, 36 CFR part 1194. These standards define electronic and information technology for purposes of section 508 and provide the technical and functional performance criteria necessary to implement the accessibility requirements specified above. As detailed below, in amending part 2205, OSHRC relies on the definitions and requirements set forth in the Access Board's standards.

Turning to the specific amendments, OSHRC proposes adding a sentence to § 2205.101 ("Purpose") indicating that part 2205 effectuates section 508 and summarizing the purpose of that