

constitutes a reasonable, good faith interpretation of the statute, taking into account the rules in this paragraph (g) and any other published guidance that relates to the application of section 414(d) to ITGs. However, this paragraph (g)(8)(v) applies with respect to the assignment of employees to governmental and commercial plans only if the benefit levels provided by the separate governmental and commercial plans are uniform. Thus, this paragraph (g)(8)(v) would not apply if the benefit level for employees under a plan purported to be a governmental plan is higher than that provided under a separate plan which covers commercial ITG employees.

(vi) *Examples.* The following examples further illustrate the application of this paragraph (g)(8):

*Example 1.* (i) *Facts.* Employee A, who is an attorney, works at the Attorney General's office of Indian tribal government B. Employee A's job location is in a government office building on tribal lands. The assigned duties and responsibilities of Employee A are principally to review the operations of marina boat operators to ensure that they comply with tribal rules and regulations as applicable to marina boat operators. Employee A provides some services for the marina, such as speaking at conferences or meetings with marina boat operators. Employee A's area of expertise is contract law.

(ii) *Conclusion.* Based on the facts and circumstances and the factors in paragraph (g)(8)(ii) through (iv) of this section, Employee A is a governmental ITG employee within the meaning of this paragraph (g)(8). Employee A primarily performs services for Indian tribal government B at a government building which is a governmental location and Employee A is on the payroll of Indian tribal government B. In addition, Employee A's assigned duties and responsibilities are primarily to provide government oversight services for Indian tribal government B.

*Example 2.* (i) *Facts.* Employee C is a police officer providing services for Indian tribal government D. Employee C's job location is the tribal police station located in a government building on tribal lands. The assigned duties and responsibilities of Employee C indicate that Employee C is expected to maintain public order, detect crime, and apprehend offenders on tribal lands of Indian tribal government D. Occasionally, while on patrol, Employee C must go to the casino operated by Indian tribal government D to restore order relating to a disturbance. Employee C's area of expertise is in general law enforcement.

(ii) *Conclusion.* Based on the facts and circumstances and the factors in paragraph (g)(8)(ii) through (iv) of this section, Employee C is a governmental ITG employee within the meaning of this paragraph (g)(8). Employee C primarily performs services for Indian tribal government D at either a government building or while on patrol, even though Employee C's patrol duties include

providing law enforcement services at the casino, which is a commercial activity under paragraph (g)(7)(i)(B) of this section. In addition, the assigned duties and responsibilities of Employee C, as well as Employee C's area of expertise, relate to general law enforcement and do not substantially relate to a commercial activity.

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## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 9

[Docket No. TTB-2011-0009; Notice No. 123]

RIN 1513-AB67

#### Proposed Establishment of the Middleburg Virginia Viticultural Area

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the approximately 198-square mile "Middleburg Virginia" viticultural area in Loudoun and Fauquier Counties in northern Virginia. 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 its regulations.

**DATES:** TTB must receive written comments on or before January 9, 2012.

**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-2011-0009 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 in lieu of mail:* 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-2011-0009. 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. 123. You also may view copies of this notice, all related petitions, maps or other supporting materials, and any comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. 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., Box 12, Washington, DC 20005; phone 202-453-1039, ext. 002.

#### 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 should, 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 a 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 (27 CFR 9.12) 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 proposed 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 proposed viticultural area;
- A narrative description of the features of the proposed 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 proposed viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed viticultural area, with the boundary of the proposed viticultural area clearly drawn thereon; and
- A detailed narrative description of the proposed viticultural area boundary based on USGS map markings.

#### Middleburg Virginia Petition

In August 2008, TTB first received a petition from Rachel E. Martin, executive vice president of Boxwood Winery in Middleburg, Virginia, proposing the establishment of the “Middleburg Virginia” American viticultural area in portions of Loudoun and Fauquier Counties in northern Virginia. The petition states that the proposed viticultural area derives its name from the Town of Middleburg, Virginia, and it is bounded by the Potomac River to the north and by mountains to the east, south, and west. The 2008 petition notes that the proposed viticultural area covers approximately 190-square miles (121,600 acres) and contains 229 acres of commercial vineyards and 12 wineries.

In July 2009, Ms. Martin submitted to TTB a modification to the proposed

Middleburg Virginia viticultural area boundary line in order to include several additional vineyards within the proposed area. The modification increased the proposed viticultural area by 1,920 acres in the Burnt Mill Run area, east of Zulla, on the USGS Rectortown map. According to the petitioner, the additional acreage has the same distinguishing features as the originally proposed viticultural area. With the petitioner’s modified boundary line, the proposed Middleburg Virginia viticultural area contains 251 acres of commercial grape growing in 10 vineyards and 14 wineries. With the petitioner’s agreement, TTB also made several small modifications to the originally-proposed boundary line in order to better match the provided maps with the petition’s narrative boundary description. These changes were made in the vicinity of the town of Marshall and Little Cobbler Mountain and then near the hamlet of Airmont along Route 734. TTB estimates that the proposed Middleburg Virginia viticultural area, as described in below, covers approximately 198-square miles (or 126,720 acres). TTB also notes that the proposed viticultural area does not overlap or otherwise affect any established or proposed American viticultural area.

Unless otherwise noted, all information and data contained in the below sections are from the petition for the proposed Middleburg Virginia viticultural area and its supporting exhibits.

#### Name Evidence

The Town of Middleburg is located in southern Loudoun County along U.S. Route 50, to the immediate north of Fauquier County and to the west of Washington, DC, according to maps submitted with the petition. The Town of Middleburg was established in 1787 by Leven Powell, who was a soldier and statesman (“Colonel John Leven Powell Returns to Middleburg,” Audrey Windsor Bergner, Middleburg Press, 1995). Originally named “Chinn’s Crossroads” after Joseph Chinn, Lt. Col. Powell renamed the town Middleburg, most likely because it was the midpoint on the trade route between the seaport of Alexandria, Virginia, and inland Winchester, Virginia (*ibid.*).

The petitioner submitted several documents as evidence of the Middleburg name and its association with the proposed viticultural area. In one magazine, the Middleburg area is cited as an internationally renowned equestrian center (“The Chronicle of the Horse,” June 20, 2008). In addition, a June 2011 article from Washingtonian

Magazine that was submitted by the petitioner as a supplemental exhibit features the Middleburg region in an article entitled “Best of Middleburg,” which includes a “Grape Adventures” section that highlights some of the wineries located within the proposed Middleburg Virginia viticultural area (“Best of Middleburg—Grape Adventures,” Lydia Strohl, Washingtonian Magazine, June 2011). Further, two local monthly newspapers for the Middleburg area, Middleburg Eccentric and Middleburg Life, contain various news articles, event listings, advertisements, and real estate listings for locations within the proposed Middleburg Virginia viticultural area.

Tourism guides for the region also contain references to places throughout the proposed Middleburg Virginia viticultural area. One visitors’ guide contains information about special events, day trips, lodging, dining, and shopping in the greater Middleburg area, which includes areas outside the Town of Middleburg that are located within the proposed viticultural area (“Visitor’s Guide to Middleburg, Virginia,” revised in 2006). Another visitor’s guide for the Middleburg region contains photographs of historical buildings, touring information, and a map of the Middleburg area (“Destination Middleburg—A Walking Tour into the Past,” Middleburg Beautification and Preservation, Inc., October 2001). TTB adds that the official tourism Web site for the Commonwealth of Virginia lists a variety of places to visit, dine, and stay that are located throughout the proposed Middleburg Virginia viticultural area under its listing for “Middleburg” (available at <http://www.virginia.org/Cities/Middleburg/>).

#### Boundary Evidence

As noted above, the proposed Middleburg Virginia viticultural area is located entirely within the Commonwealth of Virginia in portions of Loudoun and Fauquier Counties. The USGS maps show that the shared Loudoun-Fauquier County boundary line runs west-northwest to east-southeast through the proposed viticultural area, south of the Town of Middleburg. The Potomac River, which separates Maryland from Virginia, forms the northern portion of the proposed viticultural area’s boundary line. The proposed eastern, southern, and western portions of the boundary line are based on geographical features that mark the transition from wooded, rolling hills with many creeks to more mountainous areas, specifically, Catoctin and Bull Run Mountains to the east, Watery,

Swains, Little Cobbler, and Hardscrabble Mountains to the south, and the Blue Ridge Mountains to the west. The proposed boundary line uses rivers, creeks, roads, elevation points, a national park boundary line, and other points shown on the USGS maps.

*Distinguishing Features*

The distinguishing features of the proposed Middleburg Virginia

viticultural area are its climate, topography, geology, and soils.

Climate

The geographical location and terrain of the proposed Middleburg Virginia viticultural area result in a unique microclimate within the larger northern Virginia region. Climatic data for the 2005 and 2006 average growing seasons (April 1 to October 31) for the proposed

viticultural area distinguish it from the surrounding regions (data compiled by the petitioner from the National Oceanic and Atmospheric Administration, U.S. Meteorological Department, and Weather Underground, <http://www.wunderground.com>). The data are summarized in the below table.

Area/location relative to Middleburg	Degree days <sup>1</sup> (difference from Middleburg)	Maximum temperature	Minimum temperature	Average total precipitation	Wind speed average
	Units	°F	°F	Inches	mph
Proposed Middleburg AVA .....	3,568 .....	83.43	48.2	25.55	2.25
Hagerstown, MD (north) .....	3,412 (156 less) ....	86	38.5	16.60	6.5
Winchester, VA (west) .....	3,594 (26 more) ....	86	41	19.92	3.5
Culpeper, VA (south) .....	3,758 (190 more) ..	85	42	21.03	1.5
Leesburg, VA (east-southeast) .....	3,957 (389 more) ..	91.09	45.6	18.78	3.0
Dulles, VA (east) .....	3,717 (149 more) ..	89.85	43.4	30.38	6.0
Manassas, VA (southeast) .....	3,688 (120 more) ..	88.8	42.2	17.36	2.6

<sup>1</sup> In the Winkler climate classification system, heat accumulation during the grape-growing season measured in growing degree days defines climatic regions ("General Viticulture," by A.J. Winkler, J.A. Cook, W.M. Kliever, and L.A. Lider, University of California Press, 1974, pp. 61–64). One degree day accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, the minimum temperature required for grapevine growth.

As shown by the maximum and minimum temperatures in the above table, the proposed Middleburg Virginia viticultural area has both cooler highs and warmer lows than the surrounding regions during the growing season. As a result, the proposed viticultural area has a more moderated growing season climate than the surrounding areas. TTB notes that the moderated growing season temperatures contribute to developing consistent grape growth and achieving maturity for harvest before the onset of freezing temperatures. The proposed Middleburg Virginia viticultural area is generally cooler than the surrounding areas in Virginia as evidenced by its lower number of growing degree days, according to the above table.

The table also shows that the average total precipitation for the proposed Middleburg Virginia viticultural area growing season is 25.55 inches, which is greater than the growing season precipitation totals for the surrounding Hagerstown, Winchester, Culpeper, Leesburg, Dulles, and Manassas areas, at 16.60, 19.92, 21.03, 18.78, 30.38, and 17.36 inches, respectively. Based on the data in the table, the Middleburg Virginia viticultural area receives significantly more growing season precipitation than the surrounding areas except for the Dulles area the east, which receives almost 5 inches more precipitation during the growing season.

The table further shows that the wind speed average for the proposed Middleburg Virginia viticultural area is

2.25 miles per hour (mph), which is significantly less than the wind speed averages for the surrounding Hagerstown, Winchester, Leesburg, Dulles, and Manassas areas, at 6.5, 3.5, 3.0, 6.0, and 2.6 mph, respectively (although it is greater than the wind speed average for the Culpeper area to the south, at 1.5 mph). The moderate winds in the proposed viticultural area, which consist of gentle western breezes from the Ashby Gap in the Blue Ridge Mountains, dissipate the morning fog, lessen the effect of frost, and reduce mildew during the growing season.

Topography

The terrain of the proposed Middleburg Virginia viticultural area generally contains rolling hills, woods, and many creeks. It is located within the Blue Ridge Anticlinorium, between the Blue Ridge Mountains to the west and the Catoctin and Bull Run Mountains to the east. As shown on the USGS maps, elevations within the proposed viticultural area range from 220 feet (along the Potomac River shoreline, which forms the northern portion of the proposed boundary line) to 1,470 feet (at the peak of Naked Mountain in the southwest corner of the proposed viticultural area). According to the USGS maps, the southern portion of the proposed viticultural area trends southeast to southwest toward the foothills of the Blue Ridge Mountains and gradually gains in elevation.

As shown on the USGS maps submitted with the petition, the steep

slopes of the 600- to 890-foot Catoctin Mountain ridge are located to the east of the proposed boundary line of the Middleburg Virginia viticultural area. The 700- to 1,370-foot Bull Run Mountains are located to the southeast, which contrast with the 450- to 550-foot gently mounded hills, rolling terrain, and spring-fed ponds and lakes within the proposed viticultural area, according to the USGS maps.

The USGS maps also show that the 900- to 1,340-foot Watery Mountains are located to the south of the boundary line of the proposed viticultural area. By contrast, the land formations within the southern portion of the proposed viticultural area are less undulating, a feature that is important for a vineyard site, according to Alex Blackburn, the certified soil scientist who compiled the soils data for the petition (see "Soils," below).

The Little Cobbler, Red Oak, and Hard Scapple Mountains, which are heavily wooded with steep slopes ranging in elevation from 800 to 1,300 feet, are located to the southwest of the proposed viticultural area. This area is not recommended for grape growing because of erosion hazards and the difficulty of cultivation along the steep slopes of the region, according to Mr. Blackburn.

According to the USGS maps, the steep terrain and ridgelines of the 1,200- to 1,800 foot Blue Ridge Mountains are located to the west of the proposed boundary line. The higher elevations and mountainous terrain of the Blue

Ridge Mountains contrast with the lower elevation, rolling terrain within the proposed viticultural area, as shown on the USGS maps.

The Potomac River is immediately to the north of the northern portion of the proposed boundary line, flowing eastward into the Chesapeake Bay, as indicated on the USGS maps. North of the Potomac River, the terrain in Maryland is similar to that of the proposed viticultural area.

**Geology**

A geology map submitted with the petition shows that the proposed Middleburg Virginia viticultural area is underlain predominantly by fractured granite and gneiss bedrock with scattered, small greenstone dykes (“Middleburg Virginia AVA Geology and Soil Association Map,” Loudoun County Department of Building and Development, National Resources Division, and the Fauquier County GIS Department, undated). According to the Mr. Blackburn, the granite and gneiss bedrock underlying the proposed Middleburg Virginia viticultural area produce soils that are generally lower in natural fertility and water availability,

which reduces problems related to vine vigor and produces better fruit quality. The boundary line of the proposed Middleburg Virginia viticultural area largely follows the distinctive geology of the area, which contrasts to the geology of the surrounding regions.

The Potomac River and Maryland are located to the north of the proposed Middleburg Virginia viticultural area. In Maryland, the intrusions of greenstone resembling Catoctin greenstone are more numerous than those in the granites and gneisses in the proposed viticultural area. The greenstone intrusions to the north are so numerous that they more closely resemble the Catoctin greenstone formation that is located to the east, southeast, and west of the proposed viticultural area.

The regions to the east of the proposed Middleburg Virginia viticultural area are dominated by the Catoctin Formation, which consists of mostly greenstone and charnokites, and also some acidic quartzite. The Catoctin Formation continues to the Antietam Formation, which underlies the Bull Run Mountains. To the southeast of the proposed viticultural area, the bedrock consists of schist and phylites (ibid.).

An area of the same granite and gneiss bedrock formations as those within the proposed viticultural area lies to the southwest of the proposed boundary line, although those areas are at higher elevations and are not well-suited for grape growing.

To the west of the proposed Middleburg Virginia viticultural area, granites and gneisses continue to units of the Catoctin Formation, both of which form the Blue Ridge Mountains. The Ridge and Valley province, consisting of folded sedimentary rocks, begins on the western side of the Blue Ridge Mountains.

**Soils**

The soils evidence in the petition was documented by Mr. Blackburn, with contributions from Jim Sawyer, Head Soil Specialist, Fauquier County, Virginia, and Frederick M. Garst, GIS Specialist, USDA–NRCS, Harrisonburg, Virginia. The table below, which is based on that documentation, compares the extent of the dominant soils of the proposed Middleburg Virginia viticultural area both within and outside of the proposed viticultural area.

Soil series	Percentage within the proposed viticultural area	Percentage in the areas around the proposed viticultural area
Purcellville, Tankerville, and Middleburg .....	38.0	22.8
Tankerville and Philomont .....	24.0	1.2
Mongle, Codorus, and Hatboro .....	13.0	5.4
Swampoodle and Purcellville .....	11.0	3.4
Eubanks .....	6.5	6.0
Cardiff and Glenelg .....	3.0	2.9
Penn, Nestoria, and Manassas .....	2.5	0.6

As indicated in the above table and in a map included with the petition, the Purcellville-Tankerville-Middleburg and the Tankerville-Philomont soil associations are the dominant soil associations in the proposed viticultural area. These soils formed in the granite and gneiss bedrock of the proposed viticultural area, with some occasional greenstone dyke. Messrs. Sawyer and Garst noted that the dominant soil characteristics and prevalent geological properties distinguish the proposed Middleburg Virginia viticultural area from the surrounding areas.

The Purcellville soils are very deep and well-drained, with moderate available water capacity, or water available to plants. Tankerville soils are moderately deep and well-drained to excessively drained, with a lower available water capacity than

Purcellville soils. Philomont soils, formed in relatively coarser granite than that in which Purcellville and Tankerville soils formed, are very deep and well-drained, with low available water capacity. Compared to the surrounding areas, the soils in the proposed viticultural area are generally lower in natural fertility and in available water capacity. According to Mr. Blackburn, these four soils are among the best in the Blue Ridge Physiographic Province for fruit production, and grapevines grown in these soils have better quality fruit with few vigor problems. However, vineyard blocks containing these soils must be sited on specific landforms with good natural drainage that are not easily erodible or susceptible to frost.

The soils of lesser extent in the proposed Middleburg Virginia

viticultural area include Mongle, Codorus, and Hatboro soils (13 percent of the total land area); Swampoodle and Purcellville soils (11 percent); and Eubanks soils (6.5 percent). The Mongle, Codorus, Hatboro, and Swampoodle soils are moderately well-drained to very poorly drained and are located in flood plains or other low-lying areas that are generally unsuited to grape production. The Eubanks soils are very deep and well-drained, with moderate available water capacity.

Most of the soils outside of the proposed viticultural area are different because they formed in rocks that are different from those in the proposed Middleburg Virginia viticultural area. To the north, in Maryland, the soils formed in bedrock with increased greenstone intrusions. The greenstone intrusions affect soil fertility and

available water capacity, which, in turn, affects vineyard management, vine growth, and fruit quality. To the south, toward and through Culpepper County, the soils formed in granite and gneisses, with fewer greenstone intrusions than in the proposed viticultural area. The soils in that region more closely resemble Philomont soils than the Purcellville, Tankerville, and Swampoodle soils in the proposed viticultural area. To the east, the dominant Airmont, Weverton, and Stumptown soils formed in the mainly quartzite Antietam Formation, which is a continuation of the Catoctin Formation. To the west, the soils formed in granite and gneiss, which continue as units of the Catoctin Formation.

Thus, as compared to the soils in the proposed viticultural area, the soils in the surrounding areas would require different vineyard management, produce different yields, and result in different vine growth and fruit quality.

#### **TTB Determination**

TTB concludes that the petition to establish the approximately 190-square mile "Middleburg Virginia" 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, "Middleburg Virginia," 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 "Middleburg Virginia" 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, that is, "Middleburg" or "Virginia," would have viticultural significance in relation to this proposed viticultural area because: (1) According

to Geographic Names Information Service, the "Middleburg" area name refers to 73 locations in 14 States, including 22 populated places within the United States, so TTB believes that a determination of "Middleburg" as a term of viticultural significance could lead to consumer and industry confusion and should be avoided; and (2) "Virginia," standing alone, is locally and nationally known as referring to the Commonwealth of Virginia, which is already a term of viticultural significance as a state-wide appellation of origin under 27 CFR 4.25(a)(1)(ii), which provides that a State is an American appellation of origin, and 27 CFR 4.39(i)(3), which states that "[a] name has viticultural significance when it is the name of a state \* \* \*." Therefore, the proposed part 9 regulatory text set forth in this document specifies only "Middleburg Virginia" as a term of viticultural significance for purposes of part 4 of the TTB regulations.

For a wine to be eligible to use a viticultural area name as an appellation of origin or a term of viticultural significance in a brand name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name as an appellation of origin and that name or other term of viticultural significance 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.

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 TTB should establish the proposed viticultural area. TTB is also interested in receiving comments on the sufficiency and accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Middleburg Virginia viticultural area on wine labels that include the words "Middleburg Virginia" 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 terms 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 linked to this notice in Docket No. TTB-2011-0009 on "Regulations.gov," the Federal e-rulemaking portal, at <http://www.regulations.gov>. A link to the docket is available under Notice No. 123 on the TTB Web site at <http://www.ttb.gov/wine/wine-rulemaking.shtml>. Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, click on the site's Help or FAQ tabs.

- *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. 123 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 Regulations.gov, please include the entity's name in the "Organization" blank of the comment form. If you comment via postal mail or hand delivery/courier, 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 that is inappropriate for public disclosure.

#### Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, TTB will post, and the public 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> under Notice No. 123. 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 email addresses. TTB may omit voluminous attachments or material that TTB considers unsuitable for posting.

You and other members of the public may view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. 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) 453-2270 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

Elisabeth C. Kann 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. Middleburg Virginia.

(a) *Name.* The name of the viticultural area described in this section is "Middleburg Virginia". For purposes of part 4 of this chapter, "Middleburg Virginia" is a term of viticultural significance.

(b) *Approved maps.* The 13 United States Geological Survey (scale 1:24,000) topographic maps used to determine the boundary of the Middleburg Virginia viticultural area are titled:

(1) Harpers Ferry Quadrangle, West Virginia-Virginia-Maryland, 1996;

(2) Point of Rocks Quadrangle, Maryland-Virginia, 1970, photoinspected 1981;

(3) Waterford Quadrangle, Virginia-Maryland, 1970, photorevised 1984;

(4) Purcellville Quadrangle, Virginia-Loudoun Co., 1970, photorevised 1984;

(5) Lincoln Quadrangle, Virginia-Loudoun Co., 1970, photoinspected 1981;

(6) Middleburg Quadrangle, Virginia, 1968, photorevised 1978, photoinspected 1981;

(7) Rectortown Quadrangle, Virginia, 1970, photoinspected 1981;

(8) Marshall Quadrangle, Virginia-Fauquier Co., 1970, photorevised 1983;

(9) Orlean Quadrangle, Virginia, 1970, photorevised 1983;

(10) Upperville Quadrangle, Virginia, 1970, photorevised 1983;

(11) Linden Quadrangle, Virginia, 1994;

(12) Ashby Gap Quadrangle, Virginia, 1970, photorevised 1978, photoinspected 1981; and

(13) Bluemont Quadrangle, Virginia, 1970, photorevised 1979; photoinspected 1981.

(c) *Boundary.* The Middleburg Virginia viticultural area is located in Loudoun and Fauquier Counties, Virginia. The boundary of the Middleburg Virginia viticultural area is as described below:

(1) The beginning point is on the Harpers Ferry map at the intersection of the easternmost boundary line of the Harpers Ferry National Historical Park and the south bank of the Potomac River in Loudoun County, Virginia. From the beginning point, follow the south bank of the Potomac River easterly (downstream) for approximately 8.2 miles, crossing onto the Point of Rocks map, to the mouth of Catoctin Creek; then

(2) Proceed southwesterly (upstream) along the meandering Catoctin Creek for approximately 4 miles to State Route 663 (locally known as Taylorstown Road) at Taylorstown; then

(3) Proceed easterly on State Route 663 for approximately 0.1 mile to State Route 665 (locally known as Loyalty Road) in Taylorstown; then

(4) Proceed southerly on State Route 665 for approximately 5.4 miles, crossing onto the Waterford map, to State Route 662 on the south side of Waterford; then

(5) Proceed southerly on State Route 662 for approximately 2.5 miles to State Route 9 (locally known as Charles Town Pike) near Paeonian Springs; then

(6) Proceed southerly on State Route 9 (Charles Town Pike) for approximately 0.7 mile, crossing over State Route 7 (locally known as Harry Byrd Highway), to State Business Route 7 (locally known as E. Colonial Highway); then

(7) Proceed westerly on State Business Route 7 (E. Colonial Highway) for approximately 0.4 mile to the road's intersection with the continuation of State Route 662 (locally known as Canby Road); then

(8) Proceed southerly on State Route 662 (Canby Road) for approximately 4 miles, crossing over the southwest corner of the Purcellville map onto the Lincoln map, to State Route 729; then

(9) Proceed southwesterly on State Route 729 for approximately 2.8 miles to the State Route 729 bridge at North Fork Creek; then

(10) Proceed southeasterly (downstream) along the meandering North Fork Creek for approximately 4 miles to the confluence of North Fork Creek with Goose Creek; then

(11) Proceed southwesterly (upstream) along the meandering Goose Creek for approximately 5.6 miles to State Route 734 at Carters Bridge; then

(12) Proceed southeasterly on State Route 734 for approximately 2.4 miles, crossing onto the Middleburg map, to State Route 629; then

(13) Proceed southerly on State Route 629 for approximately 1 mile to the road's intersection with U.S. Route 50 at BM 341 at Dover, then continue in a straight line due south for approximately 150 feet to the Little River; then

(14) Proceed southwesterly (upstream) along the meandering Little River for approximately 8 miles to the State Route 626 bridge at Halfway; then

(15) Proceed northwesterly on State Route 626 for approximately 0.3 mile to State Route 706, and then continue northwesterly on State Route 706 for approximately 1.6 miles, crossing onto the Rectortown map, to Burnt Mill Run; then

(16) Proceed west-southwesterly (upstream) along Burnt Mill Run for approximately 0.4 mile to State Route 705; then

(17) Proceed south-southwesterly on State Route 705 for approximately 0.5 mile to State Route 715; then

(18) Proceed west-northwesterly on State Route 715 for approximately 0.4 mile to State Route 709 at Zulla; then

(19) Proceed south-southwesterly on State Route 709 for approximately 4.6 miles, crossing onto the Marshall map, to Interstate Highway 66 (0.6 mile south of Brookes Corner); then

(20) Proceed west-northwesterly on Interstate Highway 66 for approximately 4.0 miles, crossing onto the Orlean map, to State Route 732 (locally known as Ramey Road); then

(21) Proceed westerly on State Route 732 approximately 2 miles to State Route 731 (locally known as Ashville Road) near Ashville; then

(22) From the intersection of State Routes 732 and 731, proceed northwesterly in a straight line, crossing onto the Upperville map, to the marked 1,304-foot peak on Little Cobbler Mountain, then northerly in a straight line to the marked 1,117-foot peak on Little Cobbler Mountain, and then continue northerly in a straight line to the marked 771-foot peak near the

northern end of Little Cobbler Mountain; then

(23) Proceed west in a straight line for approximately 2.7 miles to the 595-foot elevation point on State Route 724, southeast of Markham, and continue west in a straight line for approximately 3.1 miles, crossing onto the Linden map, to the point where the line meets the intersection of State Route 726 and an unnamed side road (near a cemetery), approximately 0.7 mile southwest of the intersection of State Route 726 and State Route 55 (near Belle Meade); then

(24) Proceed northeasterly along State Route 726 for approximately 0.7 mile to State Route 55; then

(25) Proceed east-northeast in a straight line for approximately 1.7 miles to the point where the line meets State Route 688 at BM 629 in Wildcat Hollow; then

(26) Proceed northerly and then northeasterly on State Route 688 for approximately 5.5 miles, crossing over and back between the Linden and Upperville maps and then continuing on the Upperville map, to the road's intersection with U.S. Route 17; then

(27) Proceed northerly on U.S. Route 17 for approximately 2.0 miles, crossing onto the Ashby Gap map, to U.S. Route 50 (just east of Paris); then

(28) Proceed east-northeasterly in a straight line for approximately 1.5 miles to the marked 797-foot elevation point located along State Route 618 at a fork in the road approximately 0.65 miles north of U.S. Route 50; then

(29) Proceed southeasterly in a straight line for approximately 0.9 mile to U.S. Route 50 at BM 625, which is located at a bridge over an unnamed branch of Panther Skin Creek; then

(30) Proceed south-southeasterly in a straight line for approximately 2.9 miles, crossing onto the Upperville map, to the intersection of State Routes 712 and 710 at Kerfoot; then

(31) Proceed southeasterly on State Route 710 for approximately 2.5 miles, crossing onto the Rectortown map, to the State Route 710 bridge over Goose Creek; then

(32) Proceed northeasterly (downstream) along the meandering Goose Creek for approximately 10.9 miles to State Route 626 at Bentons Bridge; then

(33) Proceed northwesterly on State Route 626 for approximately 4.0 miles, crossing onto the Bluemont map, to State Route 630 at Unison; then

(34) Proceed northeasterly on State Route 630 for approximately 0.75 mile to Dog Branch; then

(35) Proceed northwesterly along Dog Branch for approximately 1.75 miles to State Route 719; then

(36) Proceed north-northeasterly on State Route 719 for approximately 2 miles to State Route 734 at Airmont; then

(37) Proceed east-southeasterly on State Route 734 for approximately 0.7 mile to State Route 735; then

(38) Proceed northeasterly on State Route 735 for approximately 2 miles to State Route 725; then

(39) Proceed north-northeasterly in a straight line for approximately 4.4 miles, crossing over the northwest corner of the Lincoln map and then onto the Purcellville map, to the intersection of State Routes 711 and 690, (northwest of Purcellville); then

(40) Proceed north-northeasterly on State Route 690 for approximately 3.1 miles to State Route 9, then proceed east on State Route 9 for approximately 0.2 mile to the continuation of State Route 690, then proceed northerly on State Route 690 for approximately 5.3 miles, crossing onto the Harpers Ferry map, to the road's intersection with the 600-foot elevation line immediately south of the road's marked 592-foot elevation point (located 0.75 mile east-northeast of the radio facilities at the 1,424-foot peak of Short Hill Mountain); then

(41) Proceed northerly along the 600-foot elevation line for approximately 4 miles to the intersection of the 600-foot elevation line with the Harpers Ferry National Historical Park south boundary, approximately 0.2 mile south of the point where the Washington and Frederick Counties, Maryland, boundary line intersects with the south bank of the Potomac River; then

(42) Proceed east and north approximately 0.75 mile along the Harpers Ferry National Historical Park boundary line, returning to the south bank of the Potomac River and the beginning point.

Dated: November 3, 2011.

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

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## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

#### 31 CFR Parts 1010 and 1030

RIN 1506-AB14

#### Anti-Money Laundering Program and Suspicious Activity Reporting Requirements for Housing Government Sponsored Enterprises

**AGENCY:** Financial Crimes Enforcement Network ("FinCEN"), Treasury.