

make available to all competing retailers any plan providing promotional payments or services to retailers. With these requirements met, a packer can limit the area of its promotion. However, this section is not intended to deal with the question of a packer's liability for use of an area promotion where the effect may be to injure the packer's competition.

5. *Wholesaler or third party performance of packer's obligations.* A packer may, in good faith, enter into written agreements with intermediaries, such as wholesalers, distributors or other third parties, including promoters of tripartite promotional plans, which provide that such intermediaries will perform all or part of the packer's obligations under this part. However, the interposition of intermediaries between the packer and its customers does not relieve the packer of its ultimate responsibility of compliance with the provisions of the Packers and Stockyards Act. The packer, in order to demonstrate its good faith effort to discharge its obligations under this part, should include in any such agreement provisions that the intermediary will:

(1) Give notice to the packer's customers in conformity with the standards set forth in items 3(b) and (d), supra;

(2) Check customer performance in conformity with the standards set forth in item 3(e), supra;

(3) Implement the plan in a manner which will insure its functional availability to the packer's customers in conformity with the standards set forth in item 3(c), supra (This must be done whether the plan is one devised by the packer itself or by the intermediary for use by the packer's customers.); and

(4) Provide certification in writing and at reasonable intervals that the packer's customers have been and are being treated in conformity with the agreement.

A packer who negotiates such agreements with its wholesalers, distributors or third party promoters will be considered by the Administration to have justified its "good faith" obligations under this section only if it accompanies such agreements with the following supplementary measures: At regular intervals the packer takes affirmative steps to verify that its customers are receiving the proportionally equal treatment to which they are entitled by making spot checks designed to reach a representative cross section of its customers. Whenever such spot checks indicate that the agreements are not being implemented in such a way that its customers are receiving such proportionally equal treatment, the packer takes immediate steps to expand or to supplement such agreements in a manner reasonably designed to eliminate the repetition or continuation of any such discriminations in the future.

Intermediaries, subject to the Packers and Stockyards Act, administering promotional assistance programs on behalf of a packer may be in violation of the provisions of the Packers and Stockyards Act, if they have agreed to perform the packer's obligations under the Act with respect to a program which they have represented to be usable and suitable for all the packer's competing customers if it should later develop that the

program was not offered to all or, if offered, was not usable or suitable, or was otherwise administered in a discriminatory manner.

6. *Customer's liability.* A customer, subject to the Packers and Stockyards Act, who knows, or should know, that it is receiving payments or services which are not available on proportionally equal terms to its competitors engaged in the resale of the same packer's products may be in violation of the provisions of the Act. Also, customers (subject to the Packers and Stockyards Act) that make unauthorized deductions from purchase invoices for alleged advertising or other promotional allowances may be proceeded against under the provisions of the Act.

Example: A customer subject to the Act should not induce or receive an allowance in excess of that offered in the packer's advertising plan by billing the packer at "vendor rates" or for any other amount in excess of that authorized in the packer's promotion program.

7. *Meeting competition.* A packer charged with discrimination under the provisions of the Packers and Stockyards Act may defend its actions by showing that the payments were made or the services were furnished in good faith to meet equally high payments made by a competing packer to the particular customer, or to meet equivalent services furnished by a competing packer to the particular customer. This defense, however, is subject to important limitations. For instance, it is insufficient to defend solely on the basis that competition in a particular market is very keen, requiring that special allowances be given to some customers if a packer is "to be competitive."

8. *Cost justification.* If is no defense to a charge of unlawful discrimination in the payment of an allowance or the furnishing of a service for a packer to show that such payment or service could be justified through savings in the cost of manufacture, sale, or delivery. (Approved by the Office of Management and Budget under control number 0590-0001)

[FR Doc. 92-23575 Filed 9-29-92; 8:45 am]

BILLING CODE 3410-KD-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 109, 110 and 114

[Notice 1992-16]

Independent Expenditures; Corporate and Labor Organization Expenditures

AGENCY: Federal Election Commission.

ACTION: Change in MCFL public hearing time.

SUMMARY: On July 29, 1992, the Commission published proposed regulations that would implement the Supreme Court's opinion in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986). See 57 FR 33548. The Notice of Proposed Rulemaking announced that a

public hearing would be held on October 14 and 15, 1992 at 10 a.m. The Commission has decided to change the starting time for the public hearing to 9:30 a.m. on both days. The additional time is necessary to accommodate all the witnesses who wish to testify.

DATES: The Commission will hold the hearing on October 14, 1992 at 9:30 a.m. and on October 15, 1992 at 9:30 a.m.

ADDRESSES: The hearing will be held at the Federal Election Commission, Ninth Floor Hearing Room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219-3690 or toll free (800) 424-9530.

Dated: September 24, 1992.

Scott E. Thomas,

Vice Chairman, Federal Election Commission.

[FR Doc. 92-23643 Filed 9-29-92; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 757; 92F-014P]

Texas High Plains Viticultural Area

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area located in Northwest Texas to be known as "Texas High Plains." This proposal is the result of a petition filed by Clinton M. McPherson of Lubbock, Texas.

ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make the wine were grown and enables consumers to better identify the wines they purchase.

DATES: Written comments must be received by November 16, 1992.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091-0221; Attn: Notice No. 757.

FOR FURTHER INFORMATION CONTACT:

Marjorie D. Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (202-927-8230).

SUPPLEMENTARY INFORMATION:**Background**

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also 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 a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas. Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- (a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- (b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- (c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- (d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and
- (e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF has received a petition from Clinton M. McPherson proposing to establish a viticultural area in the Texas panhandle to be known as "Texas High Plains." The proposed viticultural area contains approximately 8 million acres of flat, intensively cultivated land with cotton, sorghum and wheat the predominant crops, irrigated from the

Ogallala aquifer. The elevation is from 3,000 to 4,000 feet above sea level. Vineyards presently occupy approximately 2,000 acres, but the petitioner maintains that there is growing interest in viticulture in the area. There are presently 4 wineries active within the proposed area. Nearly half of all commercial wine grapes grown in Texas are grown in the proposed area. The petitioner states many wines from Texas High Plains grapes are achieving high acclaims in national and international competitions. He attributes the excellent quality to the Texas High Plains' high elevation, cool nights, rich soils, dry, disease free conditions, and constant breezes.

Evidence of Name

The petitioner submitted evidence that the name "Texas High Plains" is used to refer to a large portion of the Texas panhandle and that the area specified in the petition is within the larger area locally or nationally known by that name. The evidence includes:

A Texas Highway Department poster which shows a map of the State of Texas, with a shaded area in the northwest portion of the state designated as the Texas High Plains. The east and west boundaries of the shaded area agree with the proposed boundaries, though the shaded area extends further to the north and south than the proposed area.

The Wine Spectator, February 29, 1992, edition contains an article entitled "Dawn of New Texas Wine" which refers to the "High Plains around Lubbock, where many of the best wine grapes grow".

The Texas Monthly, September, 1991, edition describes a vast area in northwest Texas known as the High Plains region.

The Los Angeles Times, June 1, 1987, edition carried an article titled "Texas Wine: Taste it and Believe It" which described several wineries on the "Texas high plains"—Pheasant Ridge and Llano Estacado, both within the proposed area.

Spirit magazine, September, 1986, edition carried an article titled "The Wine Industry—Coming of Age in Texas?" which referred to the High Plains as an area in which the soil would be compatible with European vines.

Evidence of Boundaries

Evidence that the boundaries of the proposed area are as specified in the petition includes the following:

The Fall, 1991, Market Report, a publication of the Texas Wine Marketing Research Institute, Texas

Tech University, contains a map of the grape growing regions in Texas as broken down by counties. The western boundary agrees with that proposed, but the area shown on the map extends further to the north and slightly further to the east and south.

The 1986-87 Texas Almanac and State Industrial Guide published a map of the "vegetational areas" of Texas, showing the High Plains as a somewhat larger area than the one proposed, interrupted by a strip of "rolling plains" along the northern boundary of the proposed area.

The Texas Water Plan, published by the Texas Water Development Board in November, 1968, contains a map showing Texas climatological divisions, including the High Plains. The eastern boundary agrees with that proposed, but the area shown on the map extends further to the west, north and south.

According to the petitioner, the proposed boundaries omit portions of the larger area known as the "Texas High Plains" because they have been found to be unsuitable for commercial viticulture. The petitioner reports that, over the last 20 years, observers have found that risk of freeze damage became intolerable along the New Mexico border (the western boundary of the proposed area) and to the north of the proposed boundaries. This change in the minimum temperature during winter coincides roughly with the 4,000 foot elevation of these areas, higher than most of the proposed area.

In many of the narrative descriptions and maps submitted with the petition, an escarpment called the "Caprock" is used as the eastern boundary of the Texas High Plains. Since this escarpment is not represented on the U.S.G.S. maps as a single line, the petitioner has selected the 3,000 foot contour line as the eastern boundary for the proposed area. This contour line runs to the west of the escarpment; in some places it appears to be as much as 15 miles to the west.

The southern boundary of the proposed area was chosen by the petitioner because, he states, it corresponds to changes in temperature, soil type and wind which alter the growing conditions significantly. His evidence will be discussed further in the sections on soil and climate.

Viticultural History

Records of the Texas Agricultural Experiment Station in Lubbock show studies were done between 1909 and 1937 on the adaptability of many grape cultivars, including *vitis vinifera*, at the station. In the 1950s and '60s, French-American hybrids, American and

vinifera cultivars were planted in research plots at Texas Tech University, also in Lubbock. As a result of this work, commercial viticulture began in the area in 1945, and was expanded in the 1960s and again in 1973. Llano Estacado, the first winery in the area, had its first crush in 1976. Three more wineries have been developed in the Texas High Plains since then: Pheasant Ridge, Teysha and La Escarbada XIT.

In a report on the 1985 Lone Star State Wine Competition, Greater Lubbock, in its November, 1985, issue, noted that wineries within the proposed area won the only gold medal awarded, 60% of the silver medals, and nearly 40% of the bronze medals in the statewide competition. The Los Angeles Times, Monday, June 1, 1987, article, "Texas Wine: Taste It and Believe It" mentioned awards won by Llano Estacado and Pheasant Ridge at the 1986 San Francisco Fair and Wine Competition, competing against nearly 2,000 other wines, "including a bunch from California."

Geographical Features

The petitioner provided the following evidence relating to features which he contends distinguish the proposed viticultural area from the surrounding areas:

Topography

The petition states that the proposed area is distinguished from the surrounding area in part by its elevation. According to the petitioner, the most pronounced change in terrain occurs at the proposed eastern boundary of the area where an escarpment "provides an east facing wall 200-1,000 feet high along the entire east boundary of the proposed appellation, separating the Texas High Plains from the Rolling Plains to the east." The proposed area is described in the Texas Almanac as the "largest level plain of its kind in the United States." The high plains rise gradually from 3,000 feet in the east to more than 400 feet in spots along the New Mexico border.

Underlying the Texas High Plains is the Ogallala Aquifer. The Texas Almanac notes that this is an important source of irrigation water for crops grown in the area. The area has no major rivers, but there are numerous "playas" (small intermittent lakes) scattered through the area which catch water after rains and allow it to percolate back to the aquifer.

Soil

The authors of Our Texas, Ralph W. Steen and Frances Donecker, state that the High Plains were considered a

"great American desert," suitable only for grazing, until late in the nineteenth century, when the land was found to be fertile. According to a report on Conservation Tillage issued by the Texas Agricultural Experiment Station (TAES) in July, 1987, soils in the proposed area vary from predominantly brown clay loams with clay textured subsoils in the north to fine sandy loams in the central and southern regions. The Ogallala aquifer, which supports irrigation within the proposed area, ends near the proposed southern boundary. The lack of available groundwater results in soils which are sandy, shallow and highly eroded to the south and east of the proposed area. The petitioner told of one vineyard south of the proposed boundary which was abandoned due to drifting sand.

Climate

According to the petitioner, the proposed area is characterized by low annual rainfall, moderate temperature, and variable, but gentle, wind.

According to a report on Irrigation Water Management by the Texas Water Resources Institute in August, 1987, average annual rainfall within the proposed area varies from 14 inches near the western boundary to 20 inches in the east. The report notes that the greatest monthly rainfall in the area occurs between May and September, a fact the petitioner attributes to warm moist air carried into the area from the Gulf of Mexico. This tropical air sometimes brings moderate to heavy thunderstorms with hail and intense winds. According to a chart from TAES, annual precipitation gradually increases to the east of the proposed area, and decreases to the west.

Other charts from TAES compare the annual temperatures in various parts of Texas. Mean annual temperature varies from 58° on the north to 61° on the south of the proposed area, a range which the petitioner claims is important to the quality potential of wine grapes. The proposed viticultural area's coldest temperatures range just above and below 0°, with colder temperatures to the north, and warmer temperatures to the south. According to the petitioner, growers to the north of the proposed boundary have abandoned plantings due to frequent freeze loss.

The petitioner also notes that, due to the low relative humidity on the High Plains, there is a very low incidence of such disease and pest problems as downy mildew, Pierce's disease, phylloxera, and black rot, which are found in other parts of Texas.

Proposed Boundary

The boundary of the proposed Texas High Plains viticultural area may be found on six United States Geological Survey (U.S.G.S.) maps with a scale of 1:250,000. The boundary is described in § 9.144.

Executive Order 12291

It has been determined that this proposed regulation is not a major regulation as defined in Executive Order 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

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

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested parties. We particularly request comments concerning the name and boundaries of the proposed area. The area described in the petition is very large, but the evidence shows that the name "High Plains" applies to a much larger area which extends beyond the borders of the State of Texas to the west and north, and further south within the State. The use of the name "Texas High Plains" to describe the proposed area is only warranted if there is a

difference in growing conditions which coincides with the political boundaries. We are also concerned that use of the name "Texas High Plains" for a viticultural area which is smaller than the area commonly called by that name may tend to confuse consumers. We request comments as to whether there are areas suitable for viticulture within the larger area known as "Texas High Plains" which would be excluded from the proposed viticultural area. Commenters who believe a potential for confusion exists should suggest alternate names for the proposed area.

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, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Marjorie D. Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

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

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is 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.

Par. 2. Subpart C is amended by adding § 9.144 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.144 Texas High Plains.

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

(b) *Approved maps.* The appropriate maps for determining the boundary of the Texas High Plains viticultural area are six U.S.G.S. topographical maps of the 1:250,000 scale. They are titled:

- (1) "Clovis, New Mexico; Texas" 1954, revised 1973.
- (2) "Brownfield, Texas; New Mexico" 1954, revised 1973.
- (3) "Hobbs, New Mexico; Texas" 1954, revised 1973.
- (4) "Plainview, Texas" 1954, revised 1974.
- (5) "Lubbock, Texas" 1954, revised 1975.
- (6) "Big Spring, Texas" 1954, revised 1975.

(c) *Boundary.* The Texas High Plains viticultural area is located in Armstrong, Bailey, Borden, Briscoe, Castro, Cochran, Crosby, Dawson, Deaf Smith, Dickens, Floyd, Gaines, Garza, Hale, Hookley, Lamb, Lubbock, Lynn, Motley, Parmer, Randall, Swisher, Terry and Yoakum Counties, Texas. The boundary is as follows:

- (1) Beginning on the Hobbs, New Mexico; Texas, map at the intersection of the Texas-New Mexico border and U.S. Route 180 east of Hobbs, New Mexico.
- (2) The boundary follows U.S. Route 180 east through Seminole, Texas and onto the Big Spring, Texas, U.S.G.S. map where it intersects with the 3000 foot contour line in the town of Lamesa;
- (3) The boundary then follows the 3000 foot contour line in a generally northeasterly direction across the U.S.G.S. maps of Big Spring and Lubbock, Texas
- (4) The boundary continues along the 3000 foot contour line onto the map of Plainview, Texas, where it follows a generally northwesterly direction until it intersects with State Highway 217 approximately 12 miles east of Canyon, Texas;
- (5) The boundary then follows State Highway 217 west to Canyon, Texas, leaves State Highway 217 and proceeds in a straight line in a northwesterly direction until it intersects with U.S. Route 60, still within Canyon, Texas;
- (6) The boundary then follows U.S. Route 60 in a southwesterly direction onto the U.S.G.S. map of Clovis, New Mexico; Texas, where it intersects the Texas-New Mexico border;
- (7) The boundary then follows the Texas-New Mexico border south, across the U.S.G.S. map of Brownfield, Texas;

New Mexico, to the beginning point on the Hobbs, New Mexico; Texas, U.S.G.S. map.

Approved: September 23, 1992.
Stephen E. Higgins,
Director.

[FR Doc. 92-23700 Filed 9-29-92; 8:45 am]
BILLING CODE 4010-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA-4-1-5207; FRL-4515-4]

Approval and Promulgation of Air Quality Implementation Plans Louisiana; Correction of Deficiencies in VOC RACT Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes to approve the revisions to the State of Louisiana's air quality regulations concerning reasonably available control technology (RACT) for sources emitting volatile organic compounds and recodify the federally-approved State Implementation Plan (SIP) to match the State's regulatory code. This action is necessary for several reasons. First, on May 26, 1986, EPA notified the State of Louisiana that its SIP for attaining the national ambient air quality standard (NAAQS) for ozone was substantially inadequate as it applied to the seven parishes comprising the Baton Rouge ozone nonattainment area: Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, St. James, and West Baton Rouge. This notice called for the State to correct deficiencies in its Volatile Organic Compound (VOC) RACT rules as they applied to those parishes. Second, on November 8, 1989, EPA notified Louisiana that its ozone SIP was substantially inadequate as it applied to Calcasieu Parish, which comprises the Lake Charles ozone nonattainment area, and also called for the State to correct existing deficiencies in its VOC RACT rules as these applied to Calcasieu Parish. Third, the Clean Air Act, as amended on November 15, 1990, required the State to revise its SIP to correct VOC RACT deficiencies within six months of enactment. Finally, the VOC RACT rules must be recodified to provide consistency between the State's code and the SIP. The effect of today's proposed action will be to correct existing deficiencies in the VOC RACT rules of the Louisiana SIP as required by