

**DATES:** The public hearing originally scheduled for Wednesday, August 7, 2002, at 10 a.m., is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Guy Traynor of the Regulations Unit, Associate Chief Counsel, (Income Tax & Accounting), (202) 622-7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing that appeared in the *Federal Register* on April 10, 2002 (67 FR 17309), and amended on June 28, 2002 (67 FR 43574), announced that a public hearing was scheduled for August 7, 2002 at 10 a.m., in Room 2615, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is proposed regulations under section 150 of the Internal Revenue Code. The public comment period for these proposed regulations expired on July 9, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of topics to be addressed. As of July 18, 2002, no one has requested to speak. Therefore, the public hearing scheduled for August 7, 2002, is cancelled.

**Cynthia E. Grigsby,**  
Chief, Regulations Unit, Associate Chief Counsel (Income Tax & Accounting).  
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**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Part 9

[Notice No. 948]

RIN 1512-AC71

#### Proposed Establishment of Capay Valley Viticultural Area (99R-449P)

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms requests comments concerning the proposed establishment of the "Capay Valley" viticultural area in northwest Yolo County, California. The proposed Capay Valley viticultural area covers approximately 150 square miles or about 102,400 acres. Approximately 25 acres are currently planted to wine grapes.

**DATES:** Written comments must be received by September 23, 2002.

**ADDRESSES:** Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221 (Attention: Notice No. 948). See the "Public Participation" section of this notice for instructions if you want to comment by facsimile or e-mail.

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

#### SUPPLEMENTARY INFORMATION:

##### Background on Viticultural Areas

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

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of deceptive information on such labels. The FAA Act also authorizes the Bureau of Alcohol, Tobacco and Firearms (ATF) to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. A list of approved viticultural areas is contained in 27 CFR part 9, American Viticultural Areas.

###### *What Is the Definition of an American Viticultural Area?*

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

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

Section 4.25a(e)(2), title 27, CFR 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 must include:

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

- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

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

- A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

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

##### Capay Valley Petition

ATF has received a petition from Tom Frederick and Pam Welch of Capay Valley Vineyards proposing to establish a viticultural area known as "Capay Valley" in northwestern Yolo County, California. The valley has several wine grape growers, including one who recently received awards for his wines. The petitioners state that the proposed Capay Valley viticultural area covers approximately 150 square miles or about 102,400 acres. Approximately 25 acres are currently planted to wine grapes.

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

The petitioners submitted as evidence an excerpt from the book "Capay Valley: The Land & The People," by Ada Merhoff. The information provided states the name "Capay Valley" was used in the late 1840's to identify the area when Pio Pico, Governor of the territory of Alta California, granted nine square leagues of land called the Rancho Canada de Capay to three Berryessa brothers. The book also contains a copy of an 1857 map of the valley, titled "Map of the Rancho Cañada De Capay." A copy of a map titled "Property owners 1858 Canada de Capay Grant" on page 6 of the book shows further subdivisions as lands were sold.

In addition, Merhoff's book mentions the Adobe Ranch, a 19th century Capay Valley ranch owned by John Gillig which also contained a vineyard and winery. Merhoff references other works that also mention Gillig's ranch. "The Western Shore Gazeteer & Commercial Directory for the State of California—Yolo County" by C.P. Sprague and H.W. Atwell stated in 1869 that the Capay Valley Winery at Gillig's ranch processed grapes from his and several other small vineyards in the vicinity that yielded 30,000 gallons of wine in both red and white varieties. Frank T.

Gilbert's "The Illustrated Atlas and History of Yolo County" stated in 1879 that Gillig's vineyard was "awarded the premium in 1861 for having the finest vineyard in the state." Merhoff's book also states that the word "Capay" comes from the Wintun Indian's word "capi", which means stream in their Native American language.

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

According to the petitioners, the proposed "Capay Valley" viticultural area is located in northwest Yolo County and borders Napa, Lake, and Colusa Counties. The natural boundaries of the valley are formed by the Blue Ridge Mountains to the west and the Capay Hills to the east. Additionally, Cache Creek runs the entire length of the valley. The boundaries of the petitioned viticultural area generally follow these natural physical boundaries. These also coincide with the boundaries of the Capay Valley General Plan, which is a subset of the Yolo County General Plan.

In addition to the required U.S.G.S. map, the petitioner provided a set of maps of Yolo County, California compiled in 1970 as part of a soil survey by the United States Department of Agriculture, Soil Conservation Service, and the University of California Agricultural Experiment Station. These maps show in further detail the boundaries of the proposed Capay Valley viticultural area.

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

##### Soils

The petitioners assert that the soils of the proposed "Capay Valley" viticultural area range from Yolo-Brentwood, which is a well-drained, nearly level, silty clay loam on alluvial fans, to Dibble-Millsholm, which is a well drained, steep to very steep loam to silty clay loam over sandstone.

Some areas have clay soils with creek rock and debris intermixed. Volcanic ash is also found in some areas, primarily in the rolling hills in the center of the valley. The petitioners contend that these clay soils intermixed with creek rock and volcanic ash, add a distinctive viticultural aspect to the area.

The petitioners state that one of the major soil differences between Capay Valley and the adjacent Central Valley area is the abundance of calcareous soils. This supply of calcium makes the clay soils of the Capay Valley less binding and allows grapevine roots to penetrate through the soils more easily.

Water usage is therefore less than would be expected given the warm climatic conditions. The calcium-magnesium ratio in the soils is easier to manage because it is easier to add magnesium than calcium.

##### Elevation

The petitioners state that the elevation boundaries of the proposed Capay Valley viticultural area range from 100 meters on the valley floor, to 750 meters at the top of the Blue Ridge and 550 meters at the top of the Capay Hills.

##### Climate

According to the petitioners, hot, dry summers and a long growing season characterize the climate of the proposed Capay Valley viticultural area. Portions of the valley receive moderating breezes from the Sacramento Delta and San Francisco Bay. Fog creeps over the tops of the Blue Ridge during heavy fog periods in the bay, but the valley is shielded from the ground fog that is pervasive in the Sacramento Valley. Winters are moderate and late spring frosts are occasional enough to negate the need for active frost protection.

Also, the petitioners state that the Capay Valley climate is warmer than the Napa Valley to the west. This allows the Capay Valley to avoid the frost problems that are common in Napa and also offers an earlier growing season, typically 3–4 weeks. This warmer climate also reduces the need for as many sulfur sprays throughout the growing season.

Additionally, the petitioners state that the Capay Valley differs from its Central Valley neighbors to the east in that, while they share a warmer climate, Capay Valley's bud-break is typically 1–2 weeks later.

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

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

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

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

ATF certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas

merely allows wineries to more accurately describe the origin of their wines to consumers and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of a proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

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

The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because the proposed regulation is not proposing new or revised record keeping or reporting requirements.

#### **Public Participation and Request for Comments**

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

ATF requests comments from all interested parties. In addition, ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

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.

##### *Can I Review Comments Received?*

Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection by appointment at the ATF Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226. To make an appointment, telephone 202–927–7890. You may request copies of the full comments (at 20 cents per page) by writing to the ATF Reference Librarian at the address shown above.

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

ATF will not recognize any comment as confidential. All comments and materials will be disclosed to the public. If you consider your material to be confidential or inappropriate for

disclosure to the public, you should not include it in the comments. We will also disclose the name of any person who submits a comment.

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

You may submit comments by facsimile transmission to (202) 927-8525. Facsimile comments must:

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

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

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

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

- Contain your name, mailing address, and e-mail address.
- Reference this notice number.
- Be legible when printed.

We will not acknowledge receipt of e-mail. We will treat comments submitted by e-mail as originals.

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

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF Internet Web site at: <http://www.atf.treas.gov>.

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

#### **Drafting Information**

The principal author of this document is Kristy Colon, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

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

Administrative practice and procedure, Alcohol and alcoholic

beverages, Consumer protection, and Wine.

#### **Authority and Issuance**

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

#### **PART 9—AMERICAN VITICULTURAL AREAS**

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

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

#### **Subpart C—Approved American Viticultural Areas**

**Par. 2.** Subpart C is amended by adding § 9.176 to read as follows:

##### **§ 9.176 Capay Valley**

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

(b) *Approved Maps.* The appropriate map for determining the boundary of the Capay Valley viticultural area is the United States Geological Survey (U.S.G.S.) topographic map titled: 30X60 Minute Quadrangle (Healdsburg, California 1972) (Scale: 1:100,000).

(c) *Boundaries.* The Capay Valley viticultural area is located in Yolo County, California. The beginning point is the junction of the Yolo, Napa, and Lake County lines.

(1) From the beginning point, proceed north then east along the Yolo-Lake County line;

(2) At the junction of the Yolo, Lake, and Colusa County lines, continue east along the Yolo-Colusa County line to its junction with the boundary between ranges R4W and R3W;

(3) Then south along the R4W and R3W boundary to its junction with the 250 meter contour line;

(4) Proceed generally southeast along the meandering 250 meter contour line to its junction with the T10N-T11N section line;

(5) Continue east along the T10N-T11N section line to the unnamed north-south secondary highway known locally as County Road 85;

(6) Then south along County Road 85, crossing Cache Creek, to its intersection with State Highway 16;

(7) Proceed east on Highway 16 to its junction with the unnamed north-south light duty road known locally as County Road 85B;

(8) Then south on County Road 85B to its junction with the unnamed east-west light duty road known locally as County Road 23;

(9) Proceed west on County Road 23 for approximately 500 feet to an unnamed light duty road known locally as County Road 85;

(10) Proceed south on County Road 85 until the road ends and continue south in a straight line to the T9N-T10N section line;

(11) Then west on the T9N-T10N section line to the Napa-Yolo County line;

(12) Continue northwest following the Napa-Yolo county line and return to the starting point.

Signed: July 5, 2002.

**Bradley A. Buckles,**

*Director.*

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## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

#### **49 CFR Part 571**

[Docket No. NHTSA-2002-212391]

#### **NHTSA Vehicle Safety Rulemaking Priorities: 2002-2005**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Request for comments.

**SUMMARY:** This document announces the availability of a planning document that describes NHTSA's proposed vehicle safety rulemaking priorities through 2005. The plan includes those rulemaking actions of highest priority for the period 2002 to 2005, based primarily on the greatest potential protection of lives and prevention of injury, that fall within the immediate four-year time frame. In addition, NHTSA has considered the realistic likelihood for successful action, especially considering the reality of numerous worthwhile options competing for budgetary resources. The priorities were defined through extensive discussions within the agency, taking into account the views heard in recent years at public meetings and comments submitted to the agency via rulemaking notices and requests for comment. The results produced by previous NHTSA rulemaking priority planning exercises also provided input to this process. While the plan includes other active areas, in addition to the rulemaking priorities, it discusses only a portion of all rulemaking actions the agency plans to undertake in the coming four-plus years. The absence of a particular regulatory activity from the plan does not necessarily imply that the agency will not pursue it. Although the execution of a priority plan is affected by factors beyond its control (e.g.,