

crossing Christensen Creek in section 35, T1S/R3W, and continuing to the contour line's intersection with Laurel Road West, along the southern boundary line of section 1, T2S/R3W, Laurelwood map; then

(22) Proceed east 0.15 mile on Laurel Road West to its intersection with the 200-foot contour line, along the southern boundary line of section 1, T2S/R3W, Laurelwood map; then

(23) Proceed easterly 17.5 miles along the meandering 200-foot contour line, and, after crossing onto the Scholls map and crossing over Laurel Road South, McCormick Hill Road four times, and Midway Road, and after crossing over and back on the Newberg map (crossing Heaton Creek) in section 28, T2S/R2W, continue to the contour line's intersection with Mountain Home Road, east of Heaton Creek, section 21, T2S/R2W, Scholls map; then

(24) Continue easterly and then southerly 8.9 miles along the 200-foot contour line and, after crossing Baker Creek, skirting Laurel Ridge to the north, crossing onto the Beaverton map, crossing over and back on the Sherwood map, crossing over in the northwest corner of the Beaverton map, and returning to the Scholls map, continue to the contour line's intersection with the middle tributary of an unnamed creek, along the western boundary line of section 24, T2S/R2W, Scholls map; then

(25) Proceed southeast along the meandering 200-foot contour line and, after crossing over to the northeast corner of the Newberg map to the Sherwood map, continue to the contour line's intersection with Edy Road, section 25, T2S/R2W, Sherwood map; then

(26) Proceed southwest along the meandering 200-foot contour line and, after crossing onto the Newberg map, skirting part of Chicken Creek, and returning to the Sherwood map, continue to the contour line's intersection with Elwert Road, along the eastern boundary line of section 25, T2S/R2W, Sherwood map; then

(27) Proceed south 0.85 mile on Elwert Road to its intersection with Oregon Highway 99W, along the eastern boundary line of section 36, T2S/R2W, Sherwood map; then

(28) Proceed south-southwest 0.45 mile on Oregon Highway 99W to its intersection with the 250-foot contour line immediately south of an unnamed Cedar Creek tributary, section 36, T2S/R2W, Sherwood map; then

(29) Proceed southerly 1 mile along the meandering 250-foot contour line to its intersection with Middleton Road,

section 1, T3S/R2W, Sherwood map; then

(30) Proceed southwesterly 0.5 mile on Middleton Road, which becomes Rein Road, to the road's intersection with the 200-foot contour line, immediately south of Cedar Creek, section 1, T3S/R2W, Sherwood map; then

(31) Proceed 1.6 miles generally east along the 200-foot contour line to its intersection, in the village of Middleton, with an unnamed light-duty east-west road locally known as Brookman Road, section 6, T3S/R1W, Sherwood map; then

(32) Proceed easterly 0.7 mile on Brookman Road to its intersection with the Washington-Clackamas County line, at the northwest corner of section 5, T3S/R1W, Sherwood map; then

(33) Proceed east 1 mile along the Washington-Clackamas County line to its intersection with Brown Road, at the northeast corner of section 5, T3S/R1W, Sherwood map; then

(34) Proceed southerly 1 mile on Brown Road to its second intersection with the 250-foot contour line, immediately south of an intermittent stream, in section 4, T3S/R1W, Sherwood map; then

(35) Proceed southerly 2.8 miles along the meandering 250-foot contour line, skirting Hoodview, to the contour line's intersection with Baker Road, section 16, T3S/R1W, Sherwood map; then

(36) Proceed south 0.15 mile on Baker Road to its intersection with the 200-foot contour line, section 16, T3S/R1W, Sherwood map; then

(37) Proceed southwesterly 13.1 miles along the meandering 200-foot contour line and, after crossing onto the Newberg map, continue to the contour line's intersection with Wilsonville Road, north of Willamette Greenway State Park, section 60, T3S/R2W, Newberg map; then

(38) Proceed northwesterly 2 miles on Wilsonville Road to its intersection with an unnamed tributary of Spring Brook, east-northeast of Grouse Butte, section 57, T3S/R2W, Newberg map; then

(39) Proceed southwesterly 0.25 mile along the unnamed tributary of Spring Brook to its intersection with the 200-foot contour line, section 57, T3S/R2W, Newberg map; then

(40) Proceed westerly and then northerly 0.45 mile along the 200-foot contour line, following the base of Grouse Butte, to the contour line's intersection with Wilsonville Road, section 57, T3S/R2W, Newberg map; then

(41) Proceed east 0.45 mile on Wilsonville Road to its intersection with the same unnamed tributary of Spring

Brook, section 57, T3S/R2W, Newberg map; then

(42) Proceed northeasterly 0.05 mile along the unnamed tributary of Spring Brook to its intersection with the 250-foot contour line, southwest of the quarries, section 57, T3S/R2W, Newberg map; then

(43) Proceed northerly 2.2 miles along the 250-foot contour line to its intersection with Corral Creek Road (misnamed Ladd Hill Road on the Newberg map), south of Oregon Highway 99W, section 15, T3S/R2W, Newberg map; then

(44) Proceed north 0.5 mile along Corral Creek Road to its western-most intersection with an unnamed light-duty road locally known as Veritas Lane, section 15, T3S/R2W, Newberg map; then

(45) Proceed north-northwesterly in a straight line approximately 0.05 mile and return to the beginning point.

Signed: September 8, 2006.

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

Approved: October 27, 2006.

**Timothy E. Skud,**  
*Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).*

[FR Doc. E6-20018 Filed 11-24-06; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 9

[T.D. TTB-57; Re: Notice No. 39]

RIN 1513-AA70

#### Establishment of the Shawnee Hills Viticultural Area (2002R-345P)

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

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** This Treasury decision establishes the Shawnee Hills viticultural area in the Shawnee National Forest region of southern Illinois. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** *Effective Date:* December 27, 2006.

**FOR FURTHER INFORMATION CONTACT:** Rita Butler, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; telephone 202-927-8210.

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

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide consumers with adequate information regarding a product's identity and prohibits the use of misleading information on those labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

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) contains the list of approved 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 distinguishable by geographical features, the boundaries of which have been recognized and defined 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 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographic features, such as climate, soils,

elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;

- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

**Rulemaking Proceedings***Shawnee Hills Petition*

TTB received a petition from Dr. Theodore F. Wichmann, president of Owl Creek Vineyard, Inc., and Dr. Imed Dami, Illinois State Viticulturist, proposing the establishment of the "Shawnee Hills" American viticultural area in southern Illinois. The proposed Shawnee Hills viticultural area lies within portions of Alexander, Gallatin, Hardin, Jackson, Johnson, Pope, Pulaski, Randolph, Saline, Union, and William counties. The Shawnee National Forest is located largely within the proposed area. The proposed viticultural area covers about 2,140 square miles or 1.37 million acres between the Ohio and Mississippi Rivers, and is approximately 80 miles long east to west and 20 miles wide north to south. The proposed Shawnee Hills viticultural area encompasses a region of unglaciated hills and ridges that are from 400 to 800 feet higher in elevation than the flatter, glaciated land to the north and the river flood plains to the south.

Below, we discuss the evidence presented in the Shawnee Hills viticultural area petition.

*Name Evidence*

The Shawnee Indian Nation, led by Chief Tecumseh and his brother, The Prophet, occupied the southern Illinois hill country in the early 1800s in an attempt to stem the flow of white settlers from the east. As a result, the petition states, the Shawnee name became attached to the hills, and academic and State government publications document the continued use of the name. For example, the book "Land Between the Rivers" (C.W. Horrell, *et al.*, 1973), as cited in the petition, describes the region as follows:

South of the Mount Vernon hill country you come next to the Shawnee Hills [which mark] the southernmost limit of the prehistoric ice sheets. The Shawnee Hills culminate in Shawneetown Ridge, a heavily timbered wilderness of bluffs and knobs reaching up to an elevation of over a thousand feet, with rocky cliffs towering hundreds of feet above the valley floor. The Shawnee Hills are the heart of Southern

Illinois [and] the 204,000 acre Shawnee National Forest. (pg. 11.)

The Illinois State Geological Survey map "Landforms of Illinois" (1980) labels the hills within the proposed viticultural area as the Shawnee Hills. In addition, an Illinois Department of Natural Resources brochure titled "Illinois' Natural Divisions and Biodiversity" (April 2002) describes the State's 14 unique natural regions. These regions are based upon such natural features as topology, geology, soils, and climate, as well as their unique flora and fauna. According to the brochure, the Shawnee Hills natural region consists of two sections, the Greater and the Lesser Shawnee Hills.

"Shawnee" also appears in many other political and geographic names within the proposed viticultural area, including Shawneetown, Shawneetown Ridge, and the Shawnee National Forest, which lies largely within the proposed area. Furthermore, five wineries within the proposed viticultural area formed the "Shawnee Hills Wine Trail" in 1996, which is described in a brochure of the same name. According to the petition, the names "Shawnee Hills" and "Shawnee Hills Wine Trail" have been used numerous times in other national, State, and local publications.

*Boundary Evidence*

People have raised grapes in southern Illinois and the Shawnee Hills since 1860, according to "Grape Culture" by W.E. Gould (1891) as cited in the petition. The region contained 1,250 acres of vineyards in 1890, and vintners produced 19,750 gallons of wine in 1891, the petition adds, citing "Grape and Wine Production in Illinois from 1883 to Present," by R.M. Skirvin, *et al.*, in "Illinois Grape Growers and Vintners Association Conference Proceedings" (2000). Currently, there are eight wineries and 51 vineyards with approximately 160 acres planted to wine varieties within the proposed Shawnee Hills viticultural area, the petition states, citing "1999 Grape Growers and Vintner's Survey," in "Illinois Grape Growers and Vintners Association Conference Proceedings" (2000).

Academic and Illinois State government publications describe the boundaries of the Shawnee Hills landform, and the petition included copies of these publications. As described by Horrell, *et al.*, the Shawnee Hills is a region of unglaciated hills and ridges that extends across southern Illinois, about 80 miles long, from the Ohio River in the east to the Mississippi River in the west, and approximately 20 miles wide from north to south. The

region's elevation is its most distinguishing feature, averaging roughly 400 to 800 feet higher in elevation than the glaciated land immediately to the north and the Mississippi and Ohio River flood plains immediately to the south.

According to the petition, and the State of Illinois publications and maps submitted with it, the eastern boundary of the Shawnee Hills landform is the bluff line along the Ohio River, while the landform's western boundary is the high bluff line above the Mississippi bottomland. The "Illinois' Natural Divisions and Biodiversity" brochure notes that the Mt. Vernon Hill Country section of the Southern Till Plain division lies north of the Shawnee Hills. As the petition and the accompanying publications note, the dividing line between the Shawnee Hills region and the Mt. Vernon Hill Country marks the southernmost advance of Ice Age glaciers. The area immediately to the south of the Shawnee Hills consists of the lowlands and flood plains found along the Ohio and Mississippi Rivers. This region, according to the petition, is commonly called the "Cairo Delta."

Differences between the natural boundaries of the Shawnee Hills region and the boundaries of the proposed Shawnee Hills viticultural area are minor and largely a matter of convenience. For example, a road near the base of the Mississippi River bluff rather than a complex meandering elevation line is used to mark a portion of the proposed area's western boundary. The proposed Shawnee Hills viticultural area boundary also follows, in places, the boundary of the Shawnee National Forest, which covers much of the Shawnee Hills region.

#### Distinguishing Features

##### Elevation

As noted by the petitioners and by Horrell, *et al.*, in "Land Between the Rivers," elevation is the most obvious feature distinguishing the Shawnee Hills from surrounding areas. As shown on the "Paducah; Kentucky: Illinois-Missouri-Indiana" USGS map (1987) submitted with the petition, the Shawnee Hills range from 400 to 800 feet higher in elevation than the glaciated land to the north and the river delta land to the south. Most of the highest elevations in Illinois, many above 1,000 feet, are in the Shawnee Hills.

According to the petition, spectacular hills and ridges and a unique mesoclimate characterize the proposed Shawnee Hills viticultural area. Nearly all vineyards in the proposed Shawnee

Hills viticultural area are on ridge tops and bench lands ranging between 600 and 900 feet in elevation. As such, the commercial vineyards in the Shawnee Hills area have experienced little or no spring frost or winter freeze injury. An additional benefit of the Shawnee Hills topography, the petition notes, is the enhanced air circulation caused by constant summer breezes, allowing faster drying of vineyard leaves and fruit clusters following rain, thus minimizing the risk of fungal infections in an otherwise humid, wet climate.

In contrast, the Mt. Vernon Hill Country region immediately to the north of the Shawnee Hills was glaciated, and, as a result, is 400 to 500 feet lower in elevation than the Shawnee Hills, according to the petition, which adds that the Mt. Vernon region is relatively flatter with no high ridges, cliffs, or gorges. Horrell, *et al.*, describe the topography of the Mt. Vernon Hill Country as "rolling farmland."

The Cairo Delta area to the south of the Shawnee Hills is lower still, averaging about 300 to 400 feet in elevation, with an extremely flat topography that is often totally flooded by the Mississippi, Ohio, Wabash, and Cache Rivers, which all converge there. This delta region comprises all of the land in Illinois south of the Shawnee Hills. Horrell, *et al.* (1973), describe this area as follows:

Beyond Shawneetown Ridge the land drops away in gentle foothills to the low-lying swamps and lakes along the Cache River—the ancient bed of the Ohio River. Beyond Cache valley you come to the flood plain of the Ohio River itself. Two similar flood plains border Southern Illinois on the east and west, forming the banks of the Wabash and Mississippi rivers.

##### Geology

The petitioners also note that the geological characteristics of the Shawnee Hills are a distinguishing feature. The "Illinois Geological Survey," compiled by H.B. William, *et al.* (1967), as cited in the petition, notes that the backbone of the Shawnee Hills is the Shawneetown Ridge, a high ridge of Pennsylvanian, Caseyville Formation Battery Rock sandstone up to 600 feet thick, which runs east to west from the Ohio River south of the village of Shawneetown to the Mississippi River near the town of Chester. This rock is very obvious in the ridge's south-facing bluffs, as well as along the north-south roads cut through it. The ridge's northern slope consists primarily of Pennsylvanian, Abbott Formation, Grindstaff sandstone up to 350 feet thick. The southern slope consists primarily of Mississippian Upper

Chesterian, Grove Church shale up to 65 feet thick, and Kinkaid Limestone, which is 110 to 180 feet thick. The bluffs above the Mississippi River consist primarily of Lower Devonian Clear Creek chert and Backbone limestone.

This underlying mixture of sandstone, chert, and limestone gives the Shawnee Hills a Karst-like topography, honeycombed with sinkholes and limestone caves feeding many surface springs, the petition states. One of the few such areas in Illinois, the petition notes that this combination of steep slopes, rock fissures, sink holes, and caves provides the proposed viticultural area with superior surface and ground water drainage in a region that often has excessive rainfall (38 to 46 inches annually).

In contrast, the petition notes, the Mt. Vernon Hill Country to the north of the Shawnee Hills was totally glaciated, resulting in lower elevations, flatter topography, and a different geology. The southern portion of the Mt. Vernon Hill Country consists primarily of Pennsylvanian, Spoon Formation, Curlew limestone layered with DeKoren and Davis coal, as well as Carbonale Formation, Piasa limestone with number 2, 5, and 6 coals. The northern part of the Mt. Vernon Hill Country area consists primarily of Modesto Formation Shoal Creek limestone 200 to 500 feet thick with number 7 and 8 coal throughout, as well as Bond Formation, Millersville limestone 100 to 350 thick. Horrell, *et al.* (1973), describe this area as "a great crescent stretching southeast from Randolph and Perry counties to Gallatin county, where coal beds come so close to the surface that they have made this the most heavily mined region in the state."

Also in contrast, the petition notes that the Cairo Delta area south of the Shawnee Hills was flattened by water from both glacial melt and the tremendous flow and flooding of the two largest rivers in the country—the Mississippi and the Ohio, which eroded and replaced rock with clay, sand, and gravel. According to the "Illinois State Geological Survey," the northern part of the delta area consists of Cretaceous, Gulfian McNary sand, and Tuscaloosa gravel. The southern part of the delta region consists of Paleocene and Eocene Wilcox Formation, Porters Creek clay 75 to 150 feet thick.

##### Climate

Another distinguishing factor of the proposed Shawnee Hills viticultural area, according to the petitioners, is its climate. While the Shawnee Hills area generally has a continental climate, as

does all of the Midwestern United States, the hills climatically separate the upper Midwest from the South. The petition states that the Shawnee Hills region is warmer than the adjacent areas to the north but cooler than the adjacent areas to the south, which are often too hot in the summer to grow quality grapes. This climate provides a longer growing season for ripening late varieties of grapes, higher degree-days for optimum ripeness, and fewer winter occurrences of below-zero degree Fahrenheit temperatures, which can kill

buds and damage wood on many grape varieties, according to the petition.

As evidence of this unique climate, the petition included data from the Midwest Climate Center (<http://mcc.sws.uiuc.edu/summary>) for Mt. Vernon, Anna, and Cairo, Illinois. Anna is located within the proposed Shawnee Hills viticultural area; Mt. Vernon, which is within the Mt. Vernon Hill Country region, is approximately 50 miles north of Anna; while Cairo, which is within the Cairo Delta region, is approximately 35 miles south of Anna.

The table shown below, which the petitioners provided, compares

Shawnee Hills, Mt. Vernon, and Cairo temperature data. The table shows that the Shawnee Hills could be classified as a mid-Region IV climate in the Winkler heat summation climate classification system, with 3,770 growing degree-days. (During the growing season, one degree day accumulates for each degree Fahrenheit that a day's median temperature is above 50 degrees, which is the minimum temperature required for grapevine growth. See "General Viticulture," by Albert J. Winkler, University of California Press, 1974.)

**HEAT SUMMATION AS DEGREE-DAYS ABOVE 50 DEGREES FAHRENHEIT FOR THE PERIOD APRIL 15 TO OCTOBER 15**

Climate station	Degree days over 50° F								Winkler climate region
	Apr 15–30	May	Jun	Jul	Aug	Sept	Oct 1–15	Apr 15–Oct 15	
Mt. Vernon .....	108	447	706	835	774	550	123	3,543	Low Region IV
Anna .....	127	498	733	868	815	587	142	3,770	Mid Region IV
Cairo .....	159	586	823	950	872	643	168	4,201	Low Region V

Source Midwest Climate Center Data: <http://mcc.sws.uiuc.edu/summary/data>.

For the proposed Shawnee Hills viticultural area, average temperatures are highest from mid-June to mid-August during early ripening; then the temperatures taper off in September and October, which is the period of late ripening and harvest. Typically, the area experiences warm days and cool nights from late August to October.

The table below, which the petitioners also provided, describes the length of growing season for the three areas (Mt. Vernon, Anna, and Cairo). For the Shawnee Hills, the median last spring frost occurs by April 10. In 10 percent of the years, the last frost occurred after April 23. North of this area, the median last spring frost occurs in mid-April, with 10 percent occurring

after May 2. Since bud break generally occurs during the second week of April, areas to the north of the Shawnee Hills often experience more bud and shoot damage due to late frost. Also, since the first frost in the fall occurs one to three weeks later in the Shawnee Hills than in areas to the north, late varieties such as Chambourcin and Norton ripen more fully before leaf drop.

**GROWING SEASON SUMMARY, 1961–1990 BASE TEMPERATURE = 32 DEGREES FAHRENHEIT**

Station	Date of last spring frost occurrence			Date of first fall frost occurrence			Length of growing season		
	Median	90%	10%	Median	90%	10%	Median	90%	10%
Mt. Vernon .....	4/12	3/27	5/02	10/16	10/03	10/29	184	207	150
Anna .....	4/10	3/23	4/23	10/27	10/12	11/07	200	215	186
Cairo .....	3/24	3/01	4/08	11/13	10/31	11/28	233	260	214

Source Midwest Climate Center Data: <http://mcc.sws.uiuc.edu/summary/data>.

Because the Midwestern United States is a continental climate, one of the limiting factors in growing quality wine grapes is dormant wood and bud damage due to extreme cold temperatures in the winter. The next

table, as provided by the petitioners, shows that the Shawnee Hills area averages 81 days below 30 degrees Fahrenheit and 1.8 days below 0 degrees Fahrenheit each year. The region immediately to the north averages 104

days below 30 degrees Fahrenheit and 3.5 days below 0 degrees Fahrenheit. One or two days of extreme cold can mean the difference between a full crop and healthy wood, and a partial crop and damaged wood.

**AVERAGE ANNUAL TEMPERATURE VARIATION**

[Averages: 1961–1990; Extremes: 1896–2000]

Station	Average annual temperature (degrees fahrenheit)			Annual number of days of minimum temperature	
	Maximum	Minimum	Mean	<32° F	<0° F
Mt. Vernon .....	65.0	42.9	54.0	104	3.5
Anna .....	67.1	46.1	56.6	81	1.8

## AVERAGE ANNUAL TEMPERATURE VARIATION—Continued

[Averages: 1961–1990; Extremes: 1896–2000]

Station	Average annual temperature (degrees fahrenheit)			Annual number of days of minimum temperature	
	Maximum	Minimum	Mean	<32° F	<0° F
Cairo .....	67.5	49.9	58.7	64	0.7

Source: Midwest Climate Center Data: <http://mcc.sws.uiuc.edu/summary/data>.**Rainfall**

The petitioners note that while rainfall does not appear to be a distinguishing feature for the proposed Shawnee Hills viticultural area, the area's drainage capacity does differ from that of surrounding areas. Because of its well-drained soils, steep topography, and limestone base, the Shawnee Hills can shed excess water more quickly and completely than adjacent areas. In the Shawnee Hills area, most precipitation occurs in the spring months of March through May. The driest months are generally September and October, which receive an average of only 2 to 3 inches per month. Although the area receives excessive rainfall on an annual basis, the growing season and the harvest months are more moderate in terms of rainfall. The drier harvest months allow grapes to develop more intensity in flavor, color, sugar, and acid. In most years, the petition states, the Shawnee Hills vineyards produce wine grapes that are very well balanced relative to these quality parameters.

**Soils**

While noting that soils vary in the Shawnee Hills region, the petitioners provided a general description contrasting the soils of the proposed area with the soils of adjacent areas. As noted on the "General Soil Map of Illinois," prepared by J.B. Fehrenbacher (1982), the soils in the proposed Shawnee Hills viticultural area are, generally, class XIII and class XIV, which tend to be thin loess with or without residuum on limestone or interbedded sandstone, siltstone, and shale. The main soils are Alford, Hosmer, Wellston, and Zanesville. All of these soils are light colored, moderately developed, and moderately well drained. The western and southern parts of the area tend to have deeper soils, 12 to 20 feet thick, on limestone. The central and northern parts of the area tend to have soil that is 20 to 48 inches thick on sandstone, siltstone, and shale. The primary viticultural advantage of the soils within the Shawnee Hills is that they are moderately well drained and are of low fertility.

Soil drainage in the Shawnee Hills area is moderate to excellent. In this area of Karst topography, the loess soils, which tend to erode easily, are very good for quality vines and grapes. However, the best vineyard sites within the proposed Shawnee Hills viticultural area are on flat ridge tops and bench lands with deep soils that are not highly eroded.

In contrast, the soil north of the Shawnee Hills in the Mt. Vernon Hill Country are class II, which are primarily thick loess (30 to 70 inches) on Illinois drift. The main soils are Stoy, Weir, Bluford, Wynoose, Colp, and Del Rey. These soils tend to be much deeper than those in the Shawnee Hills, as well as more fertile but with poorer drainage. In general, these soils are more suited to growing such crops as corn and soybeans, which are the primary crops of the Mt. Vernon Hill Country, than to growing apples, peaches, and grapes, which are the primary crops in the Shawnee Hills area. The soils south of the Shawnee Hills in the Cairo Delta, according to the petition, are primarily class XV, which are sandy to clay alluvial sediments on bottomlands. The soils include Lawson, Sawmill, Darwin, Haymond, Perrolia, and Karnak. These soils tend to be poorly developed and poorly drained.

**Notice of Proposed Rulemaking**

On April 8, 2005, TTB published a notice of proposed rulemaking regarding the establishment of the Shawnee Hills viticultural area in the **Federal Register** (70 FR 17940) as Notice No. 39. Comments on the proposed establishment of the Shawnee Hills viticultural area were due on or before June 7, 2005.

**Comments Received**

We received 46 comments in response to Notice No. 39. Of those, 28 comments supported the petition and 18 comments opposed the petition, including one comment with 84 additional signatures attached.

Supporting commenters included the Governor of Illinois, two officers of the Illinois Grape Growers and Vintners Association (IGGVA), a representative of

the Southernmost Illinois Tourism Bureau, various wine industry members with interests within the proposed area, and several wine consumers. In addition, TTB received a detailed response to the opposing comments from one of the original Shawnee Hills petitioners, Dr. Theodore F. Wichmann, president of Owl Creek Vineyard, Inc.

Opposing commenters included industry members with interests in southern Illinois outside of the proposed area, the president of the Greater Shawnee Grape Growers Association (GSGGA), and the mayors of Pulaski and Benton, Illinois.

Below, we discuss the issues raised by the opposing commenters. We discuss some opposing comments individually, and where more than one opposing comment covers the same issue, we address those comments as a group. Where applicable, we also discuss Dr. Wichmann's responses to the opposing comments. We do not discuss the 28 supporting comments in detail.

*Opposing Comments in Support of a Larger Viticultural Area*

All commenters opposed to the establishment of the proposed Shawnee Hills viticultural area as outlined in Notice No. 39 express support for expanding the proposed viticultural area and naming it "Shawnee," "Greater Shawnee," or "Southern Illinois." For example, an industry member associated with the Shawnee Winery comments that "the area should be designated as all of Southern Illinois south of Interstate 64 and from the Mississippi River to the Wabash River." A few commenters support an even larger viticultural area encompassing all of Illinois south of Interstate 70.

**Economic Consequences, Development, and Support**

Most opposing commenters supporting the designation of a larger viticultural area in southern Illinois note that more growers would reap the economic benefits from inclusion within a larger viticultural area. One commenter states that a viticultural area encompassing all of Illinois south of Interstate 64 would double the number

of growers able to benefit from inclusion in a viticultural area. Another commenter believes that the number of benefiting growers could triple. Several opposing commenters also add that, with a larger viticultural area, wineries would have more grapes to choose from.

Some opposing commenters also state that exclusion from the proposed Shawnee Hills viticultural area would have negative economic consequences for their operations and those of other excluded southern Illinois growers. For example, the owner of the Flint Hill Vineyard near Muddy, Illinois, states that exclusion from the proposed area would "negatively affect the price of my grapes," and that as a result he could be displaced by novice growers. A Carbondale-area grower also notes that exclusion from the proposed Shawnee Hills viticultural area "would put my grapes in a competitive disadvantage and impose economic hardship on my existing enterprise."

In addition, several opposing commenters state that the creation of a smaller, rather than a larger, viticultural area in southern Illinois would negatively affect economic development efforts in the region. A commenter associated with the Office of Economic and Regional Development at Southern Illinois University states, "The future of the viticultural industry in southern Illinois is dependent upon a whole region, not the gerrymandered version being proposed." The owners of the Lost Creek Vineyard near Benton, Illinois, believe that the development of grape growing in southern Illinois should be given the same consideration in setting the boundaries of the proposed viticultural area as soil and climate conditions.

Several opposing commenters fear that economic development incentives and technical assistance offered by the State of Illinois to viticulturists, as well as U.S. Department of Agriculture assistance and loans, could be denied to growers outside of the proposed viticultural area. In particular, three growers who identified themselves as minority group members commented on this concern. Noting his exclusion from the proposed Shawnee Hills viticultural area, one such grower from Carrier Mills, Illinois, believes that it is "highly likely in the future I will hear that the location of my vineyard does not justify any State support" or support from the banking establishment.

#### Arbitrary Boundaries

Some opposing commenters state that the proposed Shawnee Hills viticultural area boundaries are arbitrary, leaving some growers outside the proposed area

by a few miles or, in some cases, "by a matter of a few hundred feet!" Others contend the proposed viticultural area boundary is arbitrary since it does not encompass most growers in southern Illinois or does not include all of the historic grape growing areas within southern Illinois. For example, the mayor of Benton, Illinois, comments that "[t]here are just too many vineyards scattered through [southern Illinois] to pretend to draw an artificial line \* \* \* along the bottom of ditches, unnamed dirt roads, and through the center of communities like Carbondale and Marion."

While most opposing commenters expressed their support for a larger viticultural area in general terms, several other industry members sought the addition of specific vineyard properties to the viticultural area as proposed. For example, the owner of the Flint Hill Vineyard notes that while members of his family have grown grapes on the same ridge since the 1920s, that ridge was excluded from the proposed viticultural area by a few miles. The president of the GSGGA states that his vineyard is outside of the proposed Shawnee Hills viticultural area "by less than one-quarter mile."

#### Lack of Distinguishing Characteristics

A few opposing commenters also state that the boundary of the proposed Shawnee Hills viticultural area is arbitrary since the proposed area is not truly distinguishable from the rest of southern Illinois based on its geography, climate, or soils.

In his comment, the president of the GSGGA included a table showing the elevation of various southern Illinois communities in support of his contention that the elevations found inside and outside the proposed Shawnee Hills viticultural area are not significantly different. These elevation differences between the proposed viticultural area and the surrounding region, this opposing commenter concludes, "are not significant enough to warrant a case for different growing conditions," and thus will not result in "detectable flavor differences" in the resulting wine.

The GSGGA president notes in particular that, given the 30-mile distance between them, the difference in elevation between Alto Vineyards, one of the highest vineyards within the proposed Shawnee Hills viticultural area, and his Monte Alegre Vineyard, outside of the proposed area, results in only a slope of 0.20 percent. In terms of climate, he states that "elevation differences of the order or 300 feet for over 30 to 40 miles do not present a

topographical hurdle for the large continental air masses that dominate the climate of the region." This commenter notes that the relative flatness and location in the center of the continent gives southern Illinois "very uniform climatic characteristics."

Other commenters also contend that there is little difference in the climate of the proposed Shawnee Hills viticultural area when compared with the climate of the surrounding region of southern Illinois, particularly as measured in average temperatures, last and first frost dates, heat accumulation as measured in degree days,<sup>1</sup> or in average rainfall. One grower notes, "Every year, the trees bud and turn at the same time, the farmers plant and harvest at the same time, [and] the rivers are all high or low at the same time."

A few opposing commenters also questioned the soil differences outlined by the original petitioners. One commenter notes that soils in southern Illinois "are mostly all acidic, heavy soils, with organic content in the 1 to 2% range or less, and although they may exhibit differences in texture, this texture can change within a single vineyard." This commenter adds "these marginal differences will be undetectable in the wine."

#### Other Issues

Some opposing commenters believe inclusion within a viticultural area is a judgment of the quality of an area's fruit and that grapes from vineyards outside of the proposed area will be regarded as substandard. The mayor of Pulaski, Illinois, states in his comment that the Shawnee Hills petition "simply assumes" that the hills surrounding the village are "substandard for grapes." One opposing commenter questioned the value of establishing a viticultural area in a region that grows only French-American hybrids and North American varieties since these "do not aspire to the flavor complexities" usually found in wines from viticultural areas growing *vinifera* grapes. In addition, a few opposing commenters note that the petitioners did not consult with growers outside the proposed Shawnee Hills viticultural area in developing their proposal.

#### Petitioner's Response

Regarding the economic issues raised by the opposing commenters, the lead

<sup>1</sup> As a measurement of heat accumulation during the growing season, one degree day accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, which is the minimum temperature required for grapevine growth. See "General Viticulture," by Albert J. Winkler, University of California Press, 1974.

Shawnee Hills petitioner, Dr. Wichmann, notes in his response that some southern Illinois growers may mistakenly believe that the establishment of a viticultural area limits to whom they may sell their grapes or who may buy their grapes. The petitioner dismisses the role of viticultural areas in economic development as being irrelevant since viticultural areas are established only to "inform consumers of where the grapes in a given bottle of wine were grown." The petitioner also states that the establishment of a viticultural area does not "imply or guarantee the quality of grapes grown within or outside its boundaries."

The Shawnee Hills petitioner contends that, by definition, a viticultural area's boundaries are restrictive since the boundaries define an area that is different from surrounding areas. In this case, the petitioner states that the proposed Shawnee Hills viticultural area differs from the surrounding areas of southern Illinois in that the Shawnee Hills landform is higher than surrounding areas, is warmer, and has different soils. The petitioner's response notes that the president of the GSGGA compared the elevations of communities outside of the proposed Shawnee Hills viticultural area mostly with communities located at the bottom of valleys and gorges within the proposed area, which, the petitioner states, minimizes the elevation differences between the proposed area and the rest of southern Illinois. The petitioner states that most commercial vineyards in the Shawnee Hills are "on high ridges above 600 feet" while elevations in the Mt. Vernon Hill Country north of the proposed area range from 300 to 450 feet and are no higher than 500 feet.

In terms of climate, the petitioner acknowledges that southern Illinois has the same overall macroclimate and agrees that the differences in elevation do not "present a topographical hurdle" for the large continental air masses that cover the region. Rather, the petitioner contends that the opposing commenters ignore how changes in elevation of 100 to 300 feet can change an area's mesoclimate and how changes in elevation of as little as 10 feet can effect a vineyard's microclimate. The petitioner's response specifically notes that due to cold air drainage, especially during times of minimum temperatures, the ridgetop vineyards within the proposed viticultural area are slightly warmer than vineyards to the north of the proposed area, a difference the petitioners contend is significant for growing grapes.

In terms of soil differences, the petitioner's response states that soils within the proposed Shawnee Hills viticultural area are class XIII and class XIV, which tend to be thin loess on limestone, with the main soils being of the Alford, Hosmer, Wellston, and Zanesville series. In contrast, the petitioner states, the soils to the north in the Mt. Vernon Hill Country are class II, which are primarily thick loess on Illinois drift. The main soils there are of the Stoy, Weir, Bluford, Wynoose, Colp, and Del Rey series.

#### TTB Response

*General Discussion:* As previously stated, a viticultural area is defined under the TTB regulations as a delimited grape growing region distinguishable by geographical features. TTB considers evidence relating to name, boundaries, and geographical features in determining whether to approve a petitioned-for viticultural area. Though the establishment of a particular viticultural area may potentially have an economic impact on local grape growers and wineries outside the area, viticultural area designations under TTB regulations are not made on the basis of the potential economic impacts in adjacent localities. We designate viticultural areas in order to allow vintners to better describe the origin of their wines and to allow consumers to better identify the wines they may purchase.

TTB wishes to clarify that the establishment of a viticultural area, by itself, does not prohibit or limit the sale of grapes grown outside the established area to vintners within the established area. The designation of a viticultural area only restricts the use of the name of the viticultural area and any related term of viticultural significance on wine labels and in wine advertisements. Requirements for the use of appellations of origin, including viticultural area names, are contained in § 4.25 of the TTB regulations (27 CFR 4.25). In order to use a viticultural area name on a wine label, at least 85 percent of the wine must be derived from grapes grown within the viticultural area and the wine must be finished within the State or States in which the viticultural area lies. However, this does not mean that vintners within a designated viticultural area may only produce wines that are subject to the 85 percent rule. Vintners located within a viticultural area may continue to produce wine from grapes grown outside that area; they simply would not be able to use the viticultural area name on the label of a wine that does not meet the 85 percent rule.

TTB also wishes to clarify, as previously noted in this document, that its establishment of a viticultural area is neither an approval nor an endorsement by TTB of the grapes grown or the wine produced in that area. Therefore, financial or other assistance to a viticultural enterprise should not be based solely on the enterprise's location inside or outside of a viticultural area.

Opposing comments raised several other issues that do not pertain to the approval standards for viticultural areas under the TTB regulations. TTB understands that these issues are important to the commenters; nevertheless, those issues are beyond the scope of this rulemaking action.

*Viticultural Area Boundary and Distinguishing Characteristics:* TTB understands that many growers in southern Illinois support the establishment of a larger viticultural area. By definition, a viticultural area is a "delimited grape-growing region distinguishable by geographic features." In other words, by its very nature, a viticultural area is a limited geographical area that excludes those growers outside that limited region. It is not the intent of TTB to harm any industry member excluded from the petitioned-for viticultural area. Rather, the designation of a viticultural area merely signifies that the viticultural area is different from surrounding areas based on one or more geographic factors. These factors may include, but are not limited to, climate (temperature, precipitation, fog, winds, etc.), soils, geology, topography, elevation, or another physical feature that may affect growing conditions within the area.

TTB believes the evidence provided in the petition shows that the proposed Shawnee Hills viticultural area encompasses an area that is different from the surrounding areas of southern Illinois. We note the evidence available to us shows that the Shawnee Hills landform is generally higher in elevation, has a different underlying geology, has somewhat warmer vineyard temperatures due to cold air drainage, and has different soils when compared to the surrounding areas of southern Illinois. While we recognize that grapes are grown across southern Illinois, to include growers outside the proposed viticultural area would ignore the differences between the Shawnee Hills landform and the surrounding region of the State.

As required by our regulations, we use features (both natural and man-made) found on the USGS map supplied by the original petitioners to define the boundary of the proposed Shawnee Hills viticultural area. As a result, the



proposed viticultural area's boundary may fall slightly inside or outside of the Shawnee Hills landform's natural boundary. As noted in Notice No. 39, rather than using the exact natural limit of the Shawnee Hills, which is delineated by a complex set of elevation lines, we mark the boundary of the proposed viticultural area using more convenient features, such as nearby roads and streams. This is consistent with our past practice regarding the use of features different from a viticultural area's natural extent to draw its boundary. (For example, see the *Boundary Description* section of T.D. TTB-27, Establishment of the Ribbon Ridge Viticultural Area, published in the **Federal Register** on June 1, 2005, at 70 FR 31342.)

However, TTB will entertain a properly prepared and submitted petition from any interested party regarding the establishment of a larger viticultural area in southern Illinois under an appropriate name. Section 4.25(e)(2) of the TTB regulations outlines the requirements for proposing an American viticultural area. A viticultural area petition must include evidence related to the proposed area's name, its boundaries, and its distinguishing geographic features, as well as a specific description of and maps showing the proposed area's boundaries. For details, see the *Requirements* section above and § 9.3(b) of our regulations.

In addition, TTB notes that all Illinois vintners may use "Illinois" or the name of an Illinois county as an appellation of origin provided that the wine in question meets the requirements of 27 CFR 4.25. Multistate and multicounty appellations can also be claimed for some wines (see § 4.25(c) and (d) for details).

#### *Opposing Comments Regarding Possible Consumer Confusion*

As noted above, all commenters opposing the establishment of the proposed Shawnee Hills viticultural area express support for a larger viticultural area to be named "Shawnee," "Greater Shawnee," or "Southern Illinois." In addition, one commenter states that the Shawnee Hills name is inappropriate and could cause consumer confusion since that name is associated with a "small five or six winery wine trail" that "represents a very small geographic area" within the proposed viticultural area. The same commenter adds that the Shawnee Hills name ignores that the grapegrowing and winemaking area "already accepted by the public" includes all of southern Illinois.

A similar comment states that some consumers may come to believe that only those wineries located along the Shawnee Hills Wine Trail are included in the Shawnee Hills viticultural area. Likewise, the president of the GSGGA notes in his comment that other localities in Kentucky and Ohio also are known as "Shawnee Hills," which he believes could cause consumer confusion over the location of a Shawnee Hills viticultural area.

#### *Petitioner's Response*

The lead Shawnee Hills petitioner sees no potential for consumer confusion since Shawnee Hills "is the name of the landform itself" and that name is used by agencies of the State of Illinois, "as well as by many others." The petitioner adds that "Southern Illinois" or "Little Egypt" may be appropriate for a larger, regional viticultural area.

#### *TTB Response*

After considering the petition evidence and the comments received, TTB concludes that the "Shawnee Hills" name is appropriate for the proposed viticultural area. We note that the Illinois State Geological Survey's "Landforms of Illinois" map labels the landform within the proposed Shawnee Hills viticultural area as the Shawnee Hills. Other State of Illinois publications also use this name for the hills and ridges located within the proposed viticultural area. TTB believes the names "Greater Shawnee," "Southern Illinois" or "Little Egypt" may best be associated with a region larger than the proposed Shawnee Hills viticultural area and, therefore, are not appropriate for the smaller proposed viticultural area. As noted above, we will consider a petition to create a larger viticultural area in southern Illinois under an appropriate name.

We also believe that the use of the Shawnee Hills name will not cause consumers to confuse the proposed viticultural area with the wine trail within it. We believe that most wine consumers understand that a viticultural area encompasses more land than the winery or vineyard properties located along any given winery driving tour.

In addition, we believe that consumers will not confuse the proposed Shawnee Hills viticultural area with similarly named places in Kentucky and Ohio. We note that Shawnee Hills, Kentucky, is a real estate development on the eastern shore of Lake Barkley, while the unincorporated community of Shawnee Hills in Greene County, Ohio, is a housing development

built around an artificial lake. The village of Shawnee Hills in Delaware County, Ohio, is now a suburb of the city of Columbus. We do not believe that any of these non-rural places are or will become known as grape-growing areas. We also note that our regulations do not require that the name of a proposed viticultural area be absolutely exclusive to the area in question.

#### **TTB Finding**

After careful review of the petition and the comments received, TTB finds that the evidence submitted supports the establishment of the proposed Shawnee Hills viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the "Shawnee Hills" viticultural area in Alexander, Gallatin, Hardin, Jackson, Johnson, Pope, Pulaski, Randolph, Saline, Union, and William counties in southern Illinois, effective 30 days from the publication date of this document.

#### *Boundary Description*

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this document.

#### *Maps*

The maps for determining the boundary of the viticultural area are listed below in the 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. With the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, its name, "Shawnee Hills," is recognized under 27 CFR 4.39(i)(3) as a name of viticultural significance. The text of the new regulation clarifies this point. Consequently, wine bottlers using "Shawnee Hills" 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, we do not believe that "Shawnee" standing alone has viticultural significance. A search of the Geographic Names Information System maintained by the U.S. Geological Survey shows no entries for "Shawnee Hills," but does show entries for "Shawnee" standing alone or in conjunction with words such as "Creek," "Lake," "Peak," or "Valley" in 29 States. We therefore conclude that "Shawnee" standing alone does not have a geographical context or meaning



that is generally limited to the location of the Shawnee Hills viticultural area. Accordingly, the regulatory text set forth in this document specifies only the full "Shawnee Hills" name as a term of viticultural significance for purposes of part 4 of the TTB regulations.

For a wine to be eligible to use an appellation of origin the name of a viticultural area or other term specified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must derive from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name or other term as an appellation of origin and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term 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 viticulturally significant term that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

#### Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is 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 rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

#### Drafting Information

Rita Butler of the Regulations and Rules Division drafted this notice.

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

Wine.

#### The Amendment

■ For the reasons discussed in the preamble, we amend 27 CFR, chapter 1, part 9 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.

#### Subpart C—Approved American Viticultural Areas

■ 2. Amend subpart C by adding § 9.206 to read as follows:

##### § 9.206 Shawnee Hills.

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

(b) *Approved maps.* The United States Geological Survey (USGS) 1:250,000-scale topographic map used to determine the boundary of the Shawnee Hills viticultural area is titled—Paducah: Kentucky–Illinois, Missouri–Indiana, 1987 edition.

(c) *Boundary.* The Shawnee Hills viticultural area is located in southern Illinois between the Ohio and Mississippi Rivers, and largely within the Shawnee National Forest. The boundary of the Shawnee Hills viticultural area is described below—

(1) Beginning at the intersection of State Routes 3 and 150 in the town of Chester (Randolph County), proceed northeast on Route 150 to its intersection with the surveyed boundary line between Township 6 South (T6S) and Township 7 South (T7S); then

(2) Proceed due east along the T6S/T7S boundary line until it becomes the boundary between Perry and Jackson Counties, and continue east along the Perry-Jackson County line to State Route 4; then

(3) Proceed southeast on State Route 4 through the villages of Campbell Hill, Ava, and Oraville to its intersection with State Route 13/127; then

(4) Proceed south on State Route 13/127 to the intersection where State Routes 13 and 127 divide in the town of Murphysboro; then

(5) Proceed east on State Route 13 through the city of Carbondale to State Route 13's intersection with Interstate 57; then

(6) Proceed south on Interstate 57 to its intersection with State Route 148; then

(7) Proceed southeast on State Route 148 to its intersection with State Route 37; then

(8) Proceed south on State Highway 37 to Saline Creek; then

(9) Proceed northeasterly (downstream) along Saline Creek to its confluence with the South Fork of the

Saline River, then continue easterly (downstream) along the South Fork of the Saline River to its confluence with the Saline River, then continue easterly and then southeasterly (downstream) along the Saline River to its confluence with the Ohio River near Saline Landing; then

(10) Proceed southwesterly (downstream) along the Ohio River to the Interstate 24 bridge; then

(11) Proceed north on Interstate 24 to its intersection with the New Columbia Ditch (with the towns of Big Bay to the northeast and New Columbia to the northwest); then

(12) Proceed westerly along the New Columbia Ditch to its confluence with the Main Ditch, and continue westerly along the Main Ditch to its confluence with the Cache River (near the Cache River's confluence with the Post Creek Cutoff), approximately 1.5 miles east-northeast of the village of Karnak; then

(13) Proceed westerly (downstream) along the Cache River, passing under Interstate 57 near the village of Ullin, and continue southeasterly along the Cache River to the river's confluence with Sandy Creek (northeast of the village of Sandusky); then

(14) Proceed westerly (upstream) along Sandy Creek approximately 4 miles to its junction with an unnamed secondary road (known locally as Alexander County Road 4); then

(15) Proceed south along the unnamed secondary road (Alexander County Road 4) to its junction with State Route 3 at the village of Olive Branch; then

(16) Proceed northwest on State Route 3 to its intersection with the Main Ditch (also known locally as Sexton Creek) at the village of Gale; then

(17) Proceed northerly along Main Ditch and Clear Creek Ditch to a light-duty road (known locally as State Forest Road) near the southwest corner of the Trail of Tears State Forest, approximately 3.75 miles east of the village of Wolf Lake; then

(18) Proceed west on the light-duty road (State Forest Road) to its intersection with State Route 3 just south of Wolf Lake; then

(19) Proceed north on State Route 3 to its junction with the Big Muddy River (near the village of Aldridge), and continue north (upstream) along the Big Muddy River to its confluence with Kincaid Creek near the village of Grimsby; then

(20) Continue northerly along Kincaid Creek to its junction with State Route 149; then

(21) Proceed west on State Route 149 to its junction with State Route 3, and then continue northwest along State

Route 3 to the beginning point in the town of Chester.

Signed: September 25, 2006.

**John J. Manfreda,**  
Administrator.

Approved: October 27, 2006.

**Timothy E. Skud,**

Deputy Assistant Secretary (Tax, Trade, and  
Tariff Policy).

[FR Doc. E6-20023 Filed 11-24-06; 8:45 am]

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## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 201

[Docket No. RM 2005-11]

#### Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

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

**ACTION:** Final rule.

**SUMMARY:** This notice announces that during the next three years, the prohibition against circumvention of technological measures that effectively control access to copyrighted works shall not apply to persons who engage in noninfringing uses of six classes of copyrighted works.

**EFFECTIVE DATE:** November 27, 2006.

**FOR FURTHER INFORMATION CONTACT:** Steven Tepp, Principal Legal Advisor, and David O. Carson, General Counsel, Copyright GC/®, P.O. Box 70400, Southwest Station, Washington, D.C. 20024-0400. Telephone: (202) 707-8380; telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** In this notice, the Librarian of Congress, upon the recommendation of the Register of Copyrights, announces that during the period from the time of this notice through October 27, 2009, the prohibition against circumvention of technological measures that effectively control access to copyrighted works shall not apply to persons who engage in noninfringing uses of six classes of copyrighted works. This announcement is the culmination of a rulemaking proceeding commenced by the Register on October 3, 2005. A more comprehensive statement of the background and legal requirements of the rulemaking, a discussion of the record and the Register's analysis may be found in the Register's memorandum of November 17, 2006, to the Librarian, which contains the full explanation of

the Register's recommendation.<sup>1</sup> This notice summarizes the Register's recommendation and publishes the regulatory text codifying the six exempted classes of works.

### I. Background

#### A. Legislative Requirements for Rulemaking Proceeding

In 1998, Congress enacted the Digital Millennium Copyright Act ("DMCA"), which among other things amended title 17, United States Code, to add section 1201. Section 1201 prohibits circumvention of technological measures employed by or on behalf of copyright owners to protect their works (hereinafter "access controls"). In order to ensure that the public will have continued ability to engage in noninfringing uses of copyrighted works, such as fair use, subparagraph (B) limits this prohibition, exempting noninfringing uses of any "particular class of works" when users are (or in the next 3 years are likely to be) adversely affected by the prohibition in their ability to make noninfringing uses of that class of works. Identification of such classes of works is made in a rulemaking proceeding conducted by the Register of Copyrights, who is to provide notice of the rulemaking, seek comments from the public, consult with the Assistant Secretary for Communications and Information of the Department of Commerce, and recommend final regulations to the Librarian of Congress. The regulations, to be issued by the Librarian of Congress, announce "any class of copyrighted works for which the Librarian has determined, pursuant to the rulemaking conducted under subparagraph (C), that noninfringing uses by persons who are users of a copyrighted work are, or are likely to be, adversely affected, and the prohibition contained in subparagraph (A) shall not apply to such users with respect to such class of works for the ensuing 3-year period."<sup>2</sup>

The first section 1201 rulemaking took place in 2000, and on October 27, 2000, the Librarian determined that noninfringing users of two classes of works would not be subject to the prohibition on circumvention of access controls.<sup>3</sup> Exemptions to the prohibition

<sup>1</sup> A copy of the Register's memorandum may be found at <http://www.copyright.gov/1201>.

<sup>2</sup> 17 U.S.C. 1201(a)(1)(D).

<sup>3</sup> Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 65 FR 64555 (October 27, 2000); <http://www.copyright.gov/fedreg/2000/65fr64555.pdf>. The Federal Register notice contained the recommendation of the Register of Copyrights and the determination of the Librarian.

on circumvention remain in force for a three-year period and expire at the end of that period. The Librarian is required to make a determination on potential new exemptions every three years. The second rulemaking culminated in the Librarian's October 28, 2003, announcement that noninfringing users of four classes of works would not be subject to the prohibition on circumvention of access controls.<sup>4</sup>

#### B. Responsibilities of Register of Copyrights and Librarian of Congress

The purpose of the rulemaking proceeding conducted by the Register is to determine whether users of particular classes of copyrighted works are, or in the next three years are likely to be, adversely affected by the prohibition in their ability to make noninfringing uses of copyrighted works. In making her recommendation to the Librarian, the Register must carefully balance the availability of works for use, the effect of the prohibition on particular uses and the effect of circumvention on copyrighted works. Section 1201(a)(1)(C) directs the Register and the Librarian to examine: "(i) the availability for use of copyrighted works; (ii) the availability for use of works for nonprofit archival, preservation, and educational purposes; (iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research; (iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and (v) such other factors as the Librarian considers appropriate."

#### C. The Purpose and Focus of the Rulemaking

##### 1. Purpose of the Rulemaking

As originally drafted, section 1201(a)(1) provided simply that "No person shall circumvent a technological measure that effectively controls access to a work protected under this title." However, in response to concerns that section 1201, in its original form, might undermine Congress's commitment to fair use if developments in the

<sup>4</sup> The announcement was published in the Federal Register on October 31, 2003. Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 68 FR 62011 (October 31, 2003); <http://www.copyright.gov/fedreg/2003/68fr2011.pdf>. On October 30, 2006, the Librarian announced that the existing classes of works were being extended, on an interim basis, pending the conclusion of the current rulemaking proceeding. Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 71 FR 63247 (October 30, 2006).