

(7) Two Rock, California Quadrangle, 7.5 Minute Series, edition of 1954; photorevised 1971;

(8) Sebastopol, California Quadrangle—Sonoma Co., 7.5 Minute Series, edition of 1954; photorevised 1980;

(9) Santa Rosa, California Quadrangle—Sonoma Co., 7.5 Minute Series, edition of 1954; and

(10) Mark West Springs, California Quadrangle, 7.5 Minute Series, edition of 1998, and

(11) Jintown, California Quadrangle—Sonoma Co., 7.5 Minute Series, edition of 1993.

(c) *Boundaries.* \* \* \*

\* \* \* \* \*

(8) Proceed southeast along the Bohemian Highway, crossing over the Camp Meeker map, to the town of Freestone, where the highway intersects at BM 214 with an unnamed medium-duty road (known locally as Bodega Road, section 12, T6N, R10W, on the Valley Ford map).

(9) Proceed 0.9 mile northeast on Bodega Road to its intersection, at BM 486, with Jonvive Road to the north and an unnamed light duty road to the south, (known locally as Barnett Valley Road, T6N, R9W, on the Camp Meeker map).

(10) Proceed 2.2 miles south, and then east, on Barnett Valley Road, crossing over the Valley Ford map, to its intersection with Burnside Road in section 17, T6N, R9W, on the Two Rock map.

(11) Proceed 3.3 miles southeast on Burnside Road to its intersection with an unnamed medium duty road at BM 375, T6N, R9W, on the Two Rock map.

(12) Proceed 0.6 mile straight southeast to an unnamed 610-foot elevation peak, 1.5 miles southwest of Canfield School, T6N, R9W, on the Two Rock map.

(13) Proceed 0.75 mile straight east-southeast to an unnamed 641-foot elevation peak, 1.4 miles south-southwest of Canfield School, T6N, R9W, on the Two Rock map.

(14) Proceed 0.85 mile straight northeast to the intersection with an unnamed intermittent stream and Canfield Road; continue 0.3 mile straight in the same northeast line of direction to its intersection with the common boundary of Ranges 8 and 9, just west of an unnamed unimproved dirt road, T6N, on the Two Rock map.

(15) Proceed 1.8 miles straight north along the common Range 8 and 9 boundary line to its intersection with Blucher Creek, T6N, on the Two Rock map.

(16) Proceed 1.25 miles generally northeast along Blucher Creek to its

intersection with Highway 116, also known as Gravenstein Highway, in section 18, T6N, R8W, on the Two Rock map.

(17) Proceed 0.2 mile straight southeast along Highway 116 to its intersection with an unnamed light duty road to the north in section 18, T6N, R8W, on the Two Rock map.

(18) Proceed 0.1 mile straight northwest along the unnamed light duty road to its intersection with an unnamed medium-duty road to the east, (known as Todd Road in section 18, T6N, R8W, on the Two Rock map).

(19) Proceed 4.8 miles east, north, and east again along Todd Road, a medium-duty road, crossing over the Sebastopol map and then passing over U.S. Highway 101 and continuing straight east 0.1 mile to Todd Road's intersection with Santa Rosa Avenue, a primary road that is generally parallel to U.S. Highway 101, in section 2, T6N, R8W, on the Santa Rosa map.

(20) Proceed 5.8 miles generally north along Santa Rosa Avenue, which becomes Mendocino Avenue, to its intersection with an unnamed secondary road, known locally as Bicentennial Way, 0.3 mile north-northwest of BM 161 on Mendocino Avenue, section 11, T7N, R8W, on the Santa Rosa map.

(21) Proceed 2.5 miles straight north, crossing over the 906-foot elevation peak in section 35 of the Santa Rosa map, to its intersection with Mark West Springs Road and the meandering 280-foot elevation in section 26, T8N, R8W, of the Mark West Springs map.

(22) Proceed 4.8 miles north-northwest along Mark West Springs Road, which becomes Porter Creek Road, to its intersection with Franz Valley Road, a light-duty road to the north of Porter Creek Road, in section 12, T8N, R8W, on the Mark West Springs map.

\* \* \* \* \*

Signed: July 6, 2005.

**John J. Manfreda,**

*Administrator.*

Approved: August 12, 2005.

**Timothy E. Skud,**

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

[FR Doc. 05-17758 Filed 9-7-05; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 9

[T.D. TTB-33; Re: Notice No. 33]

RIN 1513-AA97

#### Establishment of the Niagara Escarpment Viticultural Area (2004R-589P)

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

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

**SUMMARY:** This Treasury decision establishes the Niagara Escarpment viticultural area in Niagara County, New York. 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 October 11, 2005.

#### FOR FURTHER INFORMATION CONTACT:

Nancy Sutton, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, California 94952; telephone (415) 271-1254.

#### 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 the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on such 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 geographical 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 boundaries prominently marked.

#### Niagara Escarpment Petition and Rulemaking

##### General Background

Michael Von Heckler of Warm Lake Estate Vineyard and Winery petitioned TTB for the establishment of an American viticultural area to be called "Niagara Escarpment" in Niagara County, New York. The proposed 18,000-acre viticultural area includes approximately 400 acres of vineyards. The proposed boundary area runs in a narrow 28-mile wide band, starting at the village of Johnson Creek, traveling west through the towns of Gasport and Lockport, and ending at the Niagara River at Lewiston.

Below, we summarize the evidence presented in the petition and the comments received in response to the notice for public comment.

#### Name Evidence

The proposed Niagara Escarpment viticultural area derives its name from the Niagara Escarpment, a limestone ridge that runs for more than 650 miles through the Great Lakes region. The Niagara Escarpment forms a geological horseshoe that begins near Rochester, New York, and continues west through southern Ontario, Canada, Lake Huron, the upper peninsula of Michigan, and terminates in eastern Wisconsin.

The Niagara Escarpment enters Niagara County in the east near Johnson Creek and then runs west through the middle of the county along State Route 104 to the town of Lewiston. At the west end of Niagara County, the escarpment crosses the Niagara River Gorge, and Niagara Falls is at the head of the gorge.

Excerpts from Government and travel Internet sites discuss the Niagara Escarpment in Niagara County. These include:

- A page on the Institute for Local Governance and Regional Growth Web site that discusses how the Niagara River flows over the Niagara Escarpment creating Niagara Falls. (See <http://www.regional-institute.buffalo.edu/regi/natu.html>)
- Vintage New York's Web site states that the prime vineyard sites in western New York are "bordered by the Niagara River on the west, Lake Ontario on the north and the Niagara escarpment on the south." (See <http://www.vintagenewyork.com/regions/erie.html>)
- The Niagara Tourism and Convention Corporation's Web site notes that Niagara Landing Wine Cellars, a Niagara County winery, is "located at the base of the Niagara Escarpment." (See <http://www.niagara-usa.com/attractions/niagaralanding.html>)
- The Western New York Regional Information Network's Town of Cambria Web site describes the town as an agricultural town "divided in the middle by the Niagara Escarpment." (See [http://www.wnyrin.com/c\\_niag/welc/juri/juri\\_cambt](http://www.wnyrin.com/c_niag/welc/juri/juri_cambt))

In addition, a July 26, 2004, *Toronto Star* newspaper article on New York wineries included with the petition discusses the Niagara Escarpment, and notes that:

Ontario wine lovers are keenly aware of the Niagara Escarpment, and "the Bench" creating a special microclimate for grape growing in Niagara. Well, guess what: It comes up in New York State on the other side of the lake, in Lockport, north of Lewiston.

#### Boundary Evidence

The geography of the Niagara Escarpment defines the boundary of the proposed viticultural area. The steepness of the Niagara Escarpment makes it topographically distinct from the Ontario Plain, which extends from the south shore of Lake Ontario to the base of the escarpment, and the Huron Plain, which begins at the escarpment's crest and extends southward past the Niagara County line.

The Ontario Plain and the Huron Plain are relatively flat, with slopes of less than 20 feet per mile, according to the Soil Survey of Niagara County, New York (1972). In contrast, the Niagara Escarpment has a steep slope of 106 to 317 feet per mile. The southern and northern boundaries of the proposed Niagara Escarpment viticultural area encompass the north-facing slope of the escarpment between the 600- and 400-foot elevation lines. These boundaries generally delineate the high and low altitudes of the slope within the proposed viticultural area boundaries.

The Niagara River, which forms the international boundary line between the United States and Canada, also marks the western boundary of the proposed viticultural area. The portion of the Niagara Escarpment that extends west from the Niagara River, into the Canadian province of Ontario, is included in the Niagara Peninsula viticultural area, as designated by the Government of Canada.

At the eastern end of Niagara County a portion of Johnson Creek, south of the village of the same name, forms the proposed eastern boundary line. East of the creek, elevations at the base of the Niagara Escarpment climb from 400 to 500 feet, and its slope becomes much narrower and steeper. The changes in topography east of Johnson Creek make it less desirable for viticulture. Therefore, the petitioner did not include the escarpment area east of Johnson Creek within the proposed viticultural area boundaries.

#### Distinguishing Features

##### Topography and Soils

The topography and soils of the proposed viticultural area create distinct conditions for grape growing as compared to the surrounding areas. The Ontario and Huron Plains are nearly flat with deep soils that can harbor excessive water and nutrients. In contrast, the Niagara Escarpment has shallow soils with poor nutrient content, and sufficient sloping (2–6 percent) to allow for drainage.

The conditions found in the proposed Niagara Escarpment viticultural area—

well drained soils, sufficient sloping, a steady but moderate water supply, and restricted mineral content—result in grapes with superior pigment and flavor compounds in the resultant wine. On the other hand, the conditions of the surrounding areas beyond the proposed boundaries—poor soil drainage and high nutrient content—result in grapes with less pigmentation, diluted flavors, and a lower quality of wine produced.

As evidence of these soil differences, the “Soil Survey of Niagara County, New York” states that the central portion of Niagara County, along the escarpment, contains the Hilton-Ovid-Ontario soil association. It describes this association as “deep, well-drained to somewhat poorly drained soil.” In contrast, the survey states that the Ontario Plain north of the escarpment contains the Rhinebeck-Ovid-Madalin association, which has “deep, somewhat poorly drained to very poorly drained soils.” The Huron Plain south of the escarpment contains the Odessa-Lakemont-Ovid association, which has “deep, somewhat poorly drained to very poorly drained soils.”

#### Climate

The location of the proposed Niagara Escarpment viticultural area, in relation to Lake Ontario, creates a microclimate conducive to grape growing. The maritime influence of Lake Ontario on the Niagara Escarpment allows for sufficient heat accumulation for the growing season in what is otherwise a cool climate. The “Soil Survey of Niagara County, New York,” notes that Lake Ontario greatly influences the climate of Niagara County. The survey states, “In fall the lake waters are a source of heat that reduces cooling at night and increases the length of [the] freeze-free growing season.”

The climatic relationship between Lake Ontario and the Niagara Escarpment is discussed in greater detail in “Site Selection for Grapes in the Niagara Peninsula,” a publication issued by the Horticultural Research Institute of Ontario to assist grape growers in the Niagara Peninsula of Canada in selecting the best vineyard sites. The climate information of the publication can be applied to the proposed Niagara Escarpment viticultural area, which is adjacent to the Niagara Peninsula and shares Lake Ontario and the Niagara Escarpment with the peninsula.

According to the site selection publication, a unique airflow pattern affects the land between Lake Ontario and the crest of the escarpment. While the land warms quickly on warm days and cools rapidly on cool nights, the

lake temperature changes more slowly. In the spring the lake temperature is cooler than the temperature of the adjacent land, while in the fall the lake is warmer than the land. The lake-warmed air rises and draws cooler air in from the lakeshore in the fall and creates offshore breezes. As a result, the site selection publication states, “the air now above the lake is warmed, rises and flows back over the land, creating a circular heat-pump effect.”

In the spring and early summer the airflow pattern of the lake cools the adjacent land. Areas within two miles of the lakeshore can have a two-week delay in bud break due to the cooling effect of the lake. Also, daytime temperatures are often cooler because of the air currents of the lake. The site selection publication notes that “most grape cultivars require a long, warm season and fruit quality is sometimes poor close to the lake because of lower day temperatures.” Conversely, the proposed Niagara Escarpment viticultural area, between 6 and 8 miles from Lake Ontario, experiences little or no delay in bud break or cooler daytime temperatures due to the lake influence.

The “Site Selection for Grapes in the Niagara Peninsula” publication notes: “The pattern airflow is altered by the slope of the land. With steep slopes, cold air drainage is rapid. Flat areas or depressions tend to accumulate cold air and become ‘frost pockets.’” For areas between the lake and the escarpment, this airflow pattern minimizes frost conditions and increases heat accumulation, thereby extending the growing season of the proposed Niagara Escarpment viticultural area. Areas south of the escarpment do not benefit from the effect of the airflow pattern and are more prone to frost damage.

The proposed Niagara Escarpment viticultural area has an extended ripening season when compared to grapes grown outside its boundary. In contrast, the areas north of the escarpment experience cooling spring temperatures that retard growth, while areas south of the escarpment are more prone to fall frost damage.

#### Boundary Description

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

#### Maps

The petitioner provided the required maps, and we list them below in the regulatory text.

#### Notice of Proposed Rulemaking and Comments Received

On February 9, 2005, TTB published in the **Federal Register** (70 FR 6792) a notice of proposed rulemaking regarding the establishment of the Niagara Escarpment viticultural area (Notice No. 33). In that notice, TTB requested comments by April 11, 2005, from all interested persons. TTB received three comments. The first stated concerns with the proposed “Niagara Escarpment” name, and the second constituted a rebuttal from the petitioner on the first comment about the “Niagara Escarpment” name.

The first commenter, Steve DeBaker, is from a grape-growing region of Door and Brown counties in northeast Wisconsin that is located on the Niagara Escarpment. He explained that the escarpment covers a region substantially larger than the proposed viticultural area in New York and suggested amending the proposed viticultural area name to “Niagara Escarpment New York.” In conjunction with the state modifier, Mr. DeBaker expressed interest in petitioning for a “Niagara Escarpment Wisconsin” viticultural area.

The second comment, by the petitioner Michael Von Heckler, argued that the Niagara Escarpment viticultural area, including its name, should be established as originally proposed. Mr. Von Heckler explained that a search of literature for the “Niagara Escarpment Wisconsin” name resulted in information about flora, fauna, and recreational opportunities. The search made no mention of wine grape growing within the Niagara Escarpment geological boundaries in Wisconsin, according to Mr. Von Heckler. Also, the Wisconsin Agricultural Statistics Service does not publish grape production information because the amount of grapes produced is too small to report. Mr. Von Heckler suggested that, at some future time, Mr. DeBaker could submit a petition to expand the boundary of the Niagara Escarpment viticultural area after its establishment.

TTB, after careful consideration of the two comments, believes it is not necessary to establish the “Niagara Escarpment” viticultural area with the “New York” geographical modifier. TTB believes that if a future petitioner, in another area of the Niagara Escarpment, submits a new viticultural area petition, then a geographical modifier, such as Wisconsin, can be added for clarity and to avoid consumer confusion.

TTB also received a third comment on the proposed Niagara Escarpment viticultural area in New York from

Vintners Quality Alliance of Ontario, Canada (VQAO) because Canada is considering designation of a Niagara Escarpment viticultural area in southern Ontario. The VQAO Executive Director, Laurie Macdonald, believes the two Niagara Escarpment viticultural areas, one in Canada and one in the United States, can co-exist without consumer confusion. As she noted, Canadian producers must include the name Canada as the country of origin on the wine label, and wine producers and bottlers in Ontario must also include "VQA" in conjunction with the stated appellation term, such as "Niagara Escarpment." In light of these comments, we believe that wine produced in the Canadian Niagara Escarpment viticultural area will not be confused with the "Niagara Escarpment" wine produced in the United States.

#### TTB Finding

After careful review of the petition, TTB finds that the evidence submitted supports the establishment of the proposed viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the "Niagara Escarpment" viticultural area in Niagara County, New York, effective 30 days from this document's publication date.

#### 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, "Niagara Escarpment," is recognized as a name of viticultural significance. Consequently, wine bottlers using "Niagara Escarpment" in a brand name, including a trademark, or in another label reference as to the origin of the wine, must ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

For a wine to be eligible to use as an appellation of origin the name of a viticultural area specified in part 9 of the TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name as an appellation of origin and that name 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 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 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

Nancy Sutton of the Regulations and Procedures Division drafted this document.

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

Wine.

#### The Regulatory 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 § 9.186 to read as follows:

##### § 9.186 Niagara Escarpment.

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

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the "Niagara Escarpment" viticultural area are five United States Geological

Survey 1:250,000 scale topographic maps. They are titled:

- (1) Lewiston, New York—Ontario, 1980;
- (2) Ransomville, New York, 1980;
- (3) Cambria, New York, 1980;
- (4) Lockport, New York, 1980; and
- (5) Gasport, New York, 1979.

(c) *Boundary.* The Niagara Escarpment viticultural area is located in Niagara County, New York. The boundary of the Niagara Escarpment viticultural area is as described below:

(1) On the Lewiston map, south of the village of Lewiston within the Brydges State Artpark, begin on the east bank of the Niagara River at the mouth of Fish Creek; then

(2) Proceed north along the east bank of the Niagara River about 0.6 mile to the northern boundary of the Brydges State Artpark; then

(3) Proceed east along the northern boundary of the Brydges State Artpark about 0.8 mile to the park's northeast corner, and continue east in a straight line a short distance to the Robert Moses Parkway; then

(4) Proceed north along the Robert Moses Parkway about 0.25 mile to Ridge Road, and then east on Ridge Road (State Route 104) about 0.15 mile to the road's first intersection with the 400-foot contour line; then

(5) Continue easterly along the 400-foot contour line, through the Ransomville map (crossing Model City Road, Dickersonville Road, and State Route 429) and the Cambria map (crossing Baer Road, Plank Road, and State Route 93/270), and pass onto the Lockport map to the contour line's junction with Sunset Drive; then

(6) Proceed north on Sunset Drive 0.3 mile to its intersection with Stone Road, then east on Stone Road about 1.25 miles (crossing Eighteenmile Creek) to the intersection of Stone, Purdy, and Old Niagara Roads, and continue east along Old Niagara Road about 0.4 mile to its first intersection with the 400-foot contour line; then

(7) Proceed northeasterly along the 400-foot contour line to its first junction with Slayton Settlement Road, proceed east on Slayton Settlement Road to Day Road, and then proceed north on Day Road to its first junction with the 400-foot contour line; then

(8) Proceed easterly along the 400-foot contour line, pass onto the Gasport map (crossing Humphrey and Orangeport Roads), and continue to the contour line's junction with Quaker Road; then

(9) Proceed north on Quaker Road about 0.4 mile to its intersection with State Route 104, and then east on State Route 104 to its intersection with Johnson Creek (at the village of Johnson Creek); then

(10) Proceed south along Johnson Creek (crossing the Erie Canal), to the creek's junction with Mountain Road; then

(11) Proceed west on Mountain Road to its intersection with Gasport Road, then south on Gasport Road to its intersection with Mill Road, then west on Mill Road to its intersection with Kayner Road, then north on Kayner Road 0.65 mile to its junction with the 600-foot contour line; then

(12) Proceed westerly along the 600-foot contour line (crossing Cottage Road) to its junction with State Route 31, and continue west on State Route 31, passing onto the Lockport map and crossing the Erie Canal within the city of Lockport, to the intersection of State Route 31 and Upper Mountain Road; then

(13) Proceed north-northwesterly on Upper Mountain Road 0.65 mile and then northerly on Sunset Drive 0.25 mile to the junction of Sunset Drive and the 600-foot contour line; then

(14) Proceed westerly along the 600-foot contour line, continuing through the Cambria map (crossing State Route 93/270 and then Blackman and Baer Roads), through the Ransomville map (crossing State Route 429 just north of Pekin and then crossing Black Nose Spring and Model City Roads), and, passing onto the Lewiston map, continue westward along the contour line (through the Escarpment, Ramsey Ridge, and Lewiston Heights subdivisions), to the contour line's junction with Mountain View Drive (just east of State Highway 104 near the Niagara Falls Country Club); then

(15) Proceed west along Mountain View Drive to its intersection with State Route 104, and then proceed south on State Route 104 to its junction with Fish Creek; then

(16) Proceed westerly along Fish Creek and return to the beginning point on the east bank of the Niagara River at the mouth of Fish Creek.

Signed: July 8, 2005.

**John J. Manfreda,**  
Administrator.

Approved: August 12, 2005.

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

[FR Doc. 05-17759 Filed 9-7-05; 8:45 am]

**BILLING CODE 4810-31-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Region II Docket No. R02-OAR-2005-NY-0002; FRL-7959-1]

### Approval and Promulgation of Implementation Plans; Onondaga County Carbon Monoxide Maintenance Plan Revision; State of New York

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New York. This revision will establish an updated ten-year carbon monoxide (CO) maintenance plan for the Onondaga County attainment area.

Onondaga County was redesignated to attainment of the CO National Ambient Air Quality Standard (NAAQS) on September 29, 1993 and a maintenance plan was also approved at that time. By this action, EPA is approving the New York State Department of Environmental Conservation's (New York) second maintenance plan for Onondaga County because it provides for continued attainment for an additional ten years of the CO NAAQS. In addition, EPA is approving New York's revised Part 225-3 (Oxygenated Gasoline Program provisions).

**DATES:** This rule is effective on November 7, 2005, without further notice, unless EPA receives adverse written comment by October 11, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R02-OAR-2005-NY-0002 by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. Agency Web site: <http://docket.epa.gov/rmepub/>. Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select quick search, then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: [werner.raymond@epa.gov](mailto:werner.raymond@epa.gov).

4. Fax: (212) 637-3901.

5. Mail: RME ID Number R02-OAR-2005-NY-0002, Raymond Werner, Chief, Air Programs Branch, U.S. Environmental Protection Agency, 290 Broadway, New York, NY 10007-1866.

6. Hand Delivery or Courier: Deliver your comments to: Raymond Werner, Chief, Air Programs Branch, U.S. Environmental Protection Agency, 290 Broadway, New York, NY 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

**Instructions:** Direct your comments to Regional Material in EDocket (RME) ID Number R02-OAR-2005-NY-0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regional Material in EDocket (RME), [regulations.gov](http://regulations.gov), or e-mail. The EPA RME Web site and the Federal [regulations.gov](http://regulations.gov) Web site are anonymous access systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on