

By direction of the Commission.

Donald S. Clark,

Secretary.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

[REG-119532-08]

RIN 1545-BH94

Section 2036—Graduated Retained Interests

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance on the portion of trust property includible in the grantor's gross estate if the grantor has retained the use of the property, the right to an annuity, unitrust, graduated retained interest, or other payment from such property for life, for any period not ascertainable without reference to the grantor's death, or for a period that does not in fact end before the grantor's death. The proposed regulations will affect estates that file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

DATES: Written or electronic comments and requests for a public hearing must be received by July 29, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-119532-08), Internal Revenue Service, Room 5203, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-119532-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-119532-08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Theresa M. Melchiorre, at (202) 622-3090; concerning submissions of comments or to request a hearing, Richard A. Hurst at Richard.A.Hurst@irs.counsel.treas.gov or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On June 7, 2007, proposed regulations (REG-119097-05) were published in the **Federal Register** [72 FR 31487] providing guidance on the portion of trust corpus properly includible in a grantor's gross estate under sections 2036 and 2039. The IRS and Treasury Department determined that certain comments received in response to the proposed regulations should be addressed in a separate notice of proposed rulemaking, instead of in the final regulations published on July 14, 2008 [73 FR 40173], as TD 9414. Accordingly, this notice of proposed rulemaking proposes additional changes to the regulations in response to those comments.

The proposed regulations (REG-119097-05) addressed the amount includible in the gross estate under sections 2036 and 2039 if the grantor retains the right to receive an annuity, unitrust, or other payment from a trust for life, for any period not ascertainable without reference to the grantor's death, or for a period that does not in fact end before the grantor's death. The trusts that were the subject of the proposed regulations included grantor retained interest trusts (GRTs), such as grantor retained income trusts (GRITs), grantor retained annuity trusts (GRATs) and grantor retained unitrusts (GRUTs) described in section 2702, whether or not the grantor's retained interest was a "qualified interest" under section 2702(b), as well as other trust forms, including charitable remainder trusts (CRTs), such as charitable remainder unitrusts (CRUTs) and charitable remainder annuity trusts (CRATs) described in section 664 whether or not the trust met the qualifications of section 664(d)(1), (2), or (3). The proposed regulations incorporated the methodology provided in Rev. Rul. 76-273, 1976-2 C.B. 268, and Rev. Rul. 82-105, 1982-1 C.B. 133. See § 601.601(d)(2)(ii)(b). Under this methodology, the portion of the corpus of a GRT or a CRT includible in the decedent's gross estate under section 2036 is that portion of the trust corpus necessary to generate a return sufficient to pay the decedent's retained annuity, unitrust, or other payment.

One commentator suggested that the regulations address the portion of trust corpus of a GRAT includible in the grantor's gross estate under section 2036 if the deceased grantor retains an interest described in § 25.2702-3(b)(1)(ii)(A); that is, the annuity interest retained by the grantor increases annually during the term of the trust (a graduated retained interest). The

commentator suggested two possible methods for determining the portion of GRAT corpus includible in the grantor's gross estate if the grantor dies during the term of such a GRAT.

Another commentator questioned the result in the example contained in § 20.2036-1(c)(1)(ii) of the proposed regulations. This example considered the situation where the decedent (D) creates an irrevocable inter vivos trust, under the terms of which all trust income is to be paid to D and E, D's spouse, in equal shares during their joint lives and, on the death of the first to die of D and E, all trust income is to be paid to the survivor. On the death of the survivor of D and E, the remainder is to be paid to another individual, F. D dies survived by E. The example concludes that, because D retained the right to receive 50 percent of the trust income for a period that did not in fact end before D's death, 50 percent of the trust's corpus is includible in D's gross estate under section 2036. The example also concludes that, if instead E had predeceased D, D would have died while entitled to all of the income from the trust, so that the entire trust corpus would have been includible in D's gross estate under section 2036.

The commentator noted that, because E is identified as D's spouse, the example unnecessarily raises issues under section 2523 (gift tax marital deduction). In addition, the commentator opined that, under the facts presented, D has retained the right to receive one-half of trust income during the joint lives of D and E, and the right to receive 100 percent of the trust income if D survives E. Thus, 50 percent of the trust corpus is includible in D's gross estate by virtue of D's retained right to receive 50 percent of the trust income during D's life, and the remaining 50 percent of the trust corpus (reduced by the actuarial value of E's income interest) is includible in D's gross estate under section 2036 by virtue of D's retained right to receive all of the trust income provided D survives E.

Explanation of Provisions

In response to the comments, these proposed regulations provide the method to be used to determine the portion of trust corpus includible in the grantor's gross estate if the grantor reserves a graduated retained interest in a trust. This method applies to graduated retained interests in property whether or not the property is held in trust.

The portion of the corpus of a GRT or a CRT includible in the decedent's gross estate under section 2036 is that portion of the trust corpus necessary to generate

a return sufficient to pay the decedent's retained annuity, unitrust, or other payment. Consistent with this approach, the proposed methodology measures the amount of corpus needed to generate sufficient income to produce the payments that would have been due even after the decedent's death, as if the decedent had survived and continued to receive the retained interest. Thus, under the proposed methodology, the amount of corpus necessary to produce the retained graduated interest is the sum of the following amounts: (1) The amount of corpus required to generate sufficient income to pay, without reducing or invading principal, the annual amount payable to the decedent at the decedent's death calculated pursuant to § 20.2036-1(c)(2)(i); and (2)

for each succeeding year of the trust, the amount of corpus required to generate sufficient income to pay, without reducing or invading principal, the increase (if any) in the annuity, unitrust, or other payment for that year, deferred until the beginning date of that increase. The formula to be applied in calculating the corpus for each such succeeding year of the trust is the product of two factors: the first is the result of dividing the periodic addition (adjusted for payments made more frequently than annually, if applicable, and for payments due at the beginning, rather than the end, of a payment period (See Table K or J of § 20.2031-7(d)(6)) by the section 7520 rate (periodic addition/rate); and the second is 1 divided by the sum of 1 and the section 7520 rate

raised to the T power $(1/(1 + \text{rate})^T)$. For purposes of this formula, T is the time (expressed in years or a portion of a year) between the date of the decedent's death and the first day of the trust's first year for which the periodic addition is payable. The periodic addition for each year after the year in which the decedent's death occurs is the amount (if any) by which the annuity, unitrust, or other payment that would have been payable for that year (if the decedent had survived) exceeds the total amount of payments for the year immediately preceding that year, provided that payments increase (and do not ever decrease). This formula would be:

$$\frac{(\text{Periodic Addition}) \times (\text{Adjustment Factor})}{\text{Section 7520 Rate}} \times \frac{1}{(1 + \text{Section 7520 Rate})^T}$$

Where adjustment factor, if applicable, is the factor for payments made more frequently than annually, and for payments due at the beginning, rather than the end, of a calendar period (See Table K or J of § 20.2031-7(d)(6)) and T equals the time period in years from the date of death through the last day of the trust year immediately before the year for which the periodic addition is first payable.

The proposed regulations also add § 20.2036-1(c)(2)(iii), *Example 7*, illustrating this computation.

In addition, in response to the comments, § 20.2036-1(c)(1)(ii), *Example 1* (which was reserved in the final regulations REG-119097-05 (TD 9414)) is added. In this example, trust income is payable to D and C, D's child, in equal shares during their joint lives and, on the death of the first to die of D and C, all trust income is to be paid to the survivor. The example concludes that, if D dies before C, 100 percent of the trust corpus, reduced by the present value of C's life interest, is includible in D's gross estate under section 2036. Fifty percent of the trust corpus is includible in D's gross estate because D retained the right to receive 50 percent of the trust's income for life. The remaining 50 percent of the trust corpus (less the present value of C's outstanding life interest) is includible in D's gross estate because at D's death D retained the right to receive all of the trust income if D survived C. This result is consistent with § 20.2036-1(b)(1)(ii).

Finally, § 20.2036-1(b)(1)(ii) is amended to clarify the computation of the includible amount if the decedent retained the right to receive an annuity or other payment (rather than income)

after the death of the current recipient of that interest. Example 1 of § 20.2036-1(c)(1)(ii) has been expanded to provide an illustration of this computation. In general, under this computation, the amount includible is the portion of the date of death value of the trust corpus required to produce sufficient income to satisfy the annuity or other payment the decedent would have been entitled to receive if the decedent had survived the current recipient, reduced by the present value of the current recipient's interest. However, the amount includible shall not be less than the amount of corpus required to produce sufficient income to satisfy the annuity or other payment the decedent was entitled to receive for the trust's year in which the decedent's death occurred. In no event, however, shall the amount includible exceed the value of the trust corpus on the date of death.

Proposed Effective Date

All of § 20.2036-1(b)(1)(ii), the introductory text of § 20.2036-1(c)(1)(ii), *Example 1* of § 20.2036-1(c)(1)(ii), all of § 20.2036-1(c)(2)(ii), and *Example 7* of § 20.2036-1(c)(2)(iii) are applicable to estates of decedents dying on or after the date of publication in the **Federal Register** of the Treasury decision adopting these rules as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section

553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department also request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments to the IRS. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Theresa M. Melchiorre, Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS.

List of Subjects in 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 20 is proposed to be amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 20.2036–1 is amended by:

1. Revising paragraph (b)(1)(ii) and paragraph (c)(1)(ii) introductory text.

2. Adding paragraphs (c)(1)(ii) *Example 1*, (c)(2)(ii), (c)(2)(iii) *Example 7*, and two sentences at the end of paragraph (c)(3).

The revisions and additions read as follows:

§ 20.2036–1 Transfers with retained life estate.

* * * * *

(b) * * * (1) * * *

(ii) A decedent reserved the right to receive the income, annuity, or other payment from transferred property after the death of another person who was in fact enjoying the income, annuity, or other payment at the time of the decedent's death. In such a case, the amount to be included in the decedent's gross estate under this section does not include the value of the outstanding interest of the other person. If the other person predeceased the decedent, the reservation by the decedent may be considered to be either for life, or for a period which does not in fact end before death. If the decedent retained the right to receive an annuity or other payment (rather than income) after the death of the current recipient of that interest, then the amount includible in the decedent's gross estate under section 2036 is the amount of trust corpus required to produce sufficient income to satisfy the entire annuity or other payment the decedent would have been entitled to receive if the decedent had survived the current recipient (thus, also including the portion of that entire amount payable to the decedent before the current recipient's death), reduced by the present value of the current recipient's interest. However, the amount includible shall not be less than the amount of corpus required to produce sufficient income to satisfy the annuity or other payment the decedent

was entitled, at the time of the decedent's death, to receive for each year. In no event, however, shall the amount includible exceed the value of the trust corpus on the date of death. The following steps implement this computation.

(A) Step 1: Determine the fair market value of the trust corpus on the date of death.

(B) Step 2: Determine, in accordance with paragraph (c)(2)(i) of this section, the amount of corpus required to generate sufficient income to pay the annuity, unitrust, or other payment (determined on the date of the decedent's death) payable to the decedent for the trust year in which the decedent's death occurred.

(C) Step 3: Determine, in accordance with paragraph (c)(2)(i) of this section, the amount of corpus required to generate sufficient income to pay the annuity, unitrust, or other payment that the decedent would have been entitled to receive for each trust year if the decedent had survived the current recipient.

(D) Step 4: Determine the present value of the current recipient's annuity, unitrust, or other payment.

(E) Step 5: Reduce the amount determined in Step 3 by the amount determined in Step 4, but not to below the amount determined in Step 2.

(F) Step 6: The amount includible in the decedent's gross estate under section 2036 is the lesser of the amounts determined in Step 5 and Step 1.

* * * * *

(c) * * * (1) * * *

(ii) *Examples.* The application of paragraphs (b)(1)(ii) and (c)(1)(i) of this section is illustrated in the following examples:

Example 1. (i) In 2001, Decedent (D) creates an irrevocable inter vivos trust. The terms of the trust provide that all of the trust income is to be paid to D and C, D's child, in equal shares during their joint lives and, on the death of the first to die of D and C, all of the trust income is to be paid to the survivor. On the death of the survivor of D and C, the remainder is to be paid to another individual, F. In 2009, D dies survived by C. Fifty percent of the value of the trust corpus is includible in D's gross estate under section 2036(a)(1) because, under the terms of the trust, D retained the right to receive one-half of the trust income for D's life. In addition, the value of the remaining 50 percent of the trust corpus, less the present value of C's outstanding life estate, also is includible in D's gross estate under section 2036(a)(1), because D retained the right to receive all of the trust income for such time as D survived C. If C had predeceased D, then 100 percent of the trust corpus would have been includible in D's gross estate.

(ii) Assume the same facts as above, except that the trust provides that, rather than all the

income, an annuity of \$10,000 per year is to be paid to D and C in equal shares during their joint lives and, on the death of the first to die of D and C, the entire \$10,000 annuity is to be paid to the survivor for life. On D's date of death, the fair market value of the trust is \$120,000 and the section 7520 rate is 7 percent. At the date of death, the amount of trust corpus needed to produce D's annuity interest (\$5,000 per year) is \$71,429 (\$5,000/.07). In addition, assume the present value of C's right to receive \$5,000 annually for the remainder of C's life is \$40,000. The portion of the trust corpus includible in D's gross estate under section 2036(a)(1) is \$102,857, determined as follows:

(A) Step 1: Fair market value of corpus	\$120,000
(B) Step 2: Corpus required to produce D's date of death annuity (\$5,000/.07)	71,429
(C) Step 3: Corpus required to produce D's annuity if D had survived C (\$10,000/.07)	142,857
(D) Step 4: Present value of C's interest	40,000
(E) Step 5: The amount determined in Step 3 reduced by the amount determined in Step 4, but not to below the amount determined in Step 2 (\$142,857 – \$40,000, but not less than \$71,429)	102,857
(F) Step 6: The lesser of the amounts determined in Steps 5 and 1 (\$102,857 or \$120,000)	102,857

* * * * *

(2) * * *

(ii) *Graduated retained interests—(A) In general.* For purposes of this section, a *graduated retained interest* is the grantor's reservation of a right to receive an annuity, unitrust, or other payment as described in paragraph (c)(2)(i) of this section, payable at least annually, that increases (but does not decrease) over a period of time, not more often than annually.

(B) *Other definitions—(1) Base amount.* The *base amount* is the amount of corpus required to generate the annuity, unitrust, or other payment payable for the trust year in which the decedent's death occurs. See paragraph (c)(2)(i) of this section for the calculation of the base amount.

(2) *Periodic addition.* The *periodic addition* in a graduated retained interest for each year after the year in which decedent's death occurs is the amount (if any) by which the annuity, unitrust, or other payment that would have been payable for that year if the decedent had survived exceeds the total amount of payments for the year immediately preceding that year. For example, assume the trust instrument provides that the grantor is to receive an annual annuity payable to the grantor or his

estate for a 5-year term. The initial annual payment is \$100,000, and each succeeding annual payment is to be 120 percent of the amount payable for the

preceding year. Assuming the grantor dies in the second year of the trust (whether before or after the due date of the second annual payment), the

periodic additions for years 3, 4, and 5 of the trust are as follows:

	(1) Annual payment	(2) Prior year payment	(1-2) Periodic addition
Year 3	144,000	120,000	24,000
Year 4	172,800	144,000	28,800
Year 5	207,360	172,800	34,560

(3) *Corpus amount.* For each trust year in which a periodic addition occurs (increase year), the *corpus amount* is the amount of trust corpus which, starting from the decedent's date of death, is necessary to generate an amount of income sufficient to pay the periodic addition, beginning in the increase year and continuing in perpetuity, without

reducing or invading principal. For each year with a periodic addition, the corpus amount required as of the date of death is the product of two factors: the first is the result of dividing the periodic addition (adjusted for payments made more frequently than annually, if applicable, and for payments due at the beginning, rather

than the end, of a payment period (see Table K or J of § 20.2031-7(d)(6))) by the section 7520 rate (periodic addition/rate); and the second is 1 divided by the sum of 1 and the section 7520 rate raised to the T power (1/(1 + rate)^T).

(i) That formula is:

$$\frac{(\text{Periodic Addition}) \times (\text{Adjustment Factor})}{\text{Section 7520 Rate}} \times \frac{1}{(1 + \text{Section 7520 Rate})^T}$$

(ii) Where adjustment factor, if applicable, is the factor for payments made more frequently than annually and for payments due at the beginning, rather than the end, of a calendar period (See Table K or J of § 20.2031-7(d)(6)) and T equals the time period in years from the date of death through the last day of the trust year immediately before the year for which the periodic addition is first payable.

(C) *Amount includible.* The amount includible in the gross estate in the case of a graduated retained interest is the sum of the base amount and the corpus amount for each year for which a periodic addition is first payable. The sum of these amounts represents the amount of trust principal that would be necessary to generate the annual

payments that would have been paid to the decedent if the decedent had survived and had continued to receive the reserved graduated retained interest. The amount of trust corpus includible in a decedent's gross estate under this section, however, shall not exceed the fair market value of the trust corpus on the decedent's date of death. The provisions of this section also apply to graduated retained interests in transferred property not held in trust.

(iii) * * *
* * * * *

Example 7. (i) On November 1, year N, D transfers assets valued at \$2,000,000 to a GRAT. Under the terms of the GRAT, the trustee is to pay to D an annuity for a 5-year term that qualifies as a qualified interest described in section 2702(b). The annuity amount is to be paid annually at the end of

each trust year, on October 31st. The first annual payment is to be \$100,000. Each succeeding payment is to be 120 percent of the amount paid in the preceding year. Income not distributed in any year is to be added to principal. If D dies during the 5-year term, the payments are to be made to D's estate for the balance of the GRAT term. At the end of the 5-year term, the trust is to terminate and the corpus is to be distributed to C, D's child. D dies on January 31st of the third year of the GRAT term. On the date of D's death, the value of the trust corpus is \$3,200,000 and the section 7520 interest rate is 6.8 percent. D's executor does not elect to value the gross estate as of the alternate valuation date.

(ii) The amount includible in D's gross estate under section 2036(a)(1) is determined and illustrated as follows using the methodology contained in paragraph (c)(2)(ii)(C) of this section:

A GRAT Year	B Annual annuity payment	C Periodic addition	D Required principal: C × Adj. factor/ 0.068	E Deferral period: death to GRAT Year	F Present value factor: 1/(1+.068) ^E	G Corpus amount at death: D × F
3	144,000	n/a	2,117,647	n/a	n/a	2,117,647
4	172,800	28,800	423,529	0.747945	0.951985	403,193
5	207,360	34,560	508,235	1.747945	0.891372	453,026
Total						2,973,866

(iii) An illustration of the amount of trust corpus (as of the decedent's death) necessary

to produce the scheduled payments is as follows:

		Year 3	Year 4	Year 5	Includible amount
Additional Annuity	\$34,560	Deferral Period		\$453,026	\$453,026
Additional Annuity	28,800	Deferral Period	\$403,193		403,193
Annuity in Year of Death	144,000	\$2,117,647	2,117,647
Total amount included in gross estate (sum)	2,973,866

(iv) A total corpus amount (as defined in paragraph (c)(2)(ii)(B)(3) of this section) of \$2,973,866 constitutes the principal required as of D's date of death to produce (without reducing or invading principal) the annual payments that D would have received if D had survived and continued to receive the retained annuity. Therefore, \$2,973,866 of the trust corpus is includible in D's gross estate under section 2036(a)(1). The remaining \$226,134 of the trust corpus is not includible in D's gross estate under section 2036(a)(1). The result would be the same if D's retained annuity instead had been payable to D for a term of 5 years, or until D's prior death, at which time the GRAT would have terminated and the trust corpus would have become payable to another.

(v) If, instead, D's annuity was to have been paid on a monthly or quarterly basis, then the periodic addition would have to be adjusted as provided in paragraph (c)(2)(ii)(B)(3) of this section. Specifically, in Column D of the Table for years 4 and 5 in this example, the amount of the principal required would be computed by multiplying the periodic addition by the appropriate factor from Table K or J of § 20.2036-7(d)(6) before dividing as indicated and computing the amounts in Columns E through G. In addition, Column D in year 3 also would have to be so adjusted. Under the facts presented, section 2039 does not apply to include any amount in D's gross estate by reason of this retained interest. See § 20.2039-1(e).

(3) * * * Paragraph (b)(1)(ii) of this section is applicable to estates of decedents dying on or after the date of publication in the **Federal Register** of the Treasury decision adopting these rules as final regulations. The introductory text of paragraph (c)(1)(ii) of this section, *Example 1* of paragraph (c)(1)(ii) of this section, all of paragraph (c)(2)(ii) of this section, and *Example 7* of paragraph (c)(2)(iii) of this section, are applicable to estates of decedents dying on or after the date of publication in the **Federal Register** of the Treasury decision adopting these rules as final regulations.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[TTB Docket No. 2007-0060; Notice No. 94; Re: Notice Nos. 71 and 72]

RIN 1513-AB27

Proposed Establishment of the Paso Robles Westside Viticultural Area (2006R-087P)

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

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau announces the withdrawal of its proposal to establish the Paso Robles Westside viticultural area within the existing Paso Robles viticultural area in San Luis Obispo County, California. We take this action because, given the conflicting information before us, we cannot conclude that a delimited grape-growing region exists that is recognized by the name Paso Robles Westside.

DATES: Notice No. 71 is withdrawn as of April 30, 2009.

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., 158, Petaluma, CA 94952; telephone 415-271-1254.

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau

(TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for petitions for the establishment of viticultural areas and 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;