

		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.*

[FR Doc. E9-10003 Filed 4-29-09; 8:45 am]

**BILLING CODE 4830-01-P**

**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;

- 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.

#### Publication of Notice No. 71

On January 24, 2007, TTB published Notice No. 71, a notice of proposed rulemaking, in the **Federal Register** (72 FR 3088) regarding the proposed establishment of the "Paso Robles Westside" American viticultural area in northern San Luis Obispo County, California. We undertook that action in response to a petition filed on behalf of 21 vintners and grape growers with interests in the proposed viticultural area. As outlined in Notice No. 71, the proposed Paso Robles Westside viticultural area lay west of the Salinas River but entirely within the existing Paso Robles viticultural area (27 CFR 9.84), which in turn is entirely within the existing, multi-county Central Coast viticultural area (27 CFR 9.75).

Comments on the proposed Paso Robles Westside viticultural area were originally due on or before March 26, 2007. However, on March 23, 2007, in response to a request from other Paso Robles wine industry members, we extended the comment period for Notice No. 71 until April 24, 2007 (see Notice No. 72 published in the **Federal Register** at 72 FR 13720 on March 23, 2007).

Shortly before publication of Notice No. 71, TTB received 12 petitions from the Paso Robles AVA Committee (PRAVAC), one of which proposed the expansion of the existing Paso Robles viticultural area and 11 of which proposed the establishment of 11 smaller viticultural areas within the expanded Paso Robles viticultural area.

#### Comments Received in Response to Notice No. 71

TTB received 220 comments in response to Notice No. 71. Of those, 144 supported the establishment of the proposed Paso Robles Westside viticultural area, 61 opposed it, and, of the remaining 15 commenters, 2 requested an extension of time to comment and 13 provided comments that could not be described as clearly supporting or opposing the proposal. The 144 supporting comments included 19 from grape growers and/or wine producers and 125 from other sources. Of the 61 opposing comments, 43 were from grape growers and/or wine producers, including a single comment from the 59-member PRAVAC. The

remaining 18 opposing comments were from other sources. These comments are posted under Notice No. 71 on the TTB Web site at [http://www.ttb.gov/wine/wine\\_rulemaking.shtml](http://www.ttb.gov/wine/wine_rulemaking.shtml).

#### Supporting Comments

The 19 grape growers and/or wine producers supporting the establishment of the Paso Robles Westside viticultural area agree that the proposed area's topography, climate, and soils are different from the rest of the existing Paso Robles viticultural area and that the area is therefore deserving of separate recognition under the Paso Robles Westside name.

Doug Beckett, the owner of Peachy Canyon Winery and the proposed Paso Robles Westside lead petitioner, submitted two strongly supportive comments (numbered by TTB as comments 55 and 128) for the area's establishment. In comment 55, he largely reiterates the petition's evidence and conclusions. He states, for example, that the soil analysis report included in the petition found that the "soils contained in the Proposed Paso Robles Westside AVA are unique to the area." In comment 128, Mr. Beckett argues that the Paso Robles Westside viticultural area petition does not conflict with the separate PRAVAC effort to expand the existing Paso Robles viticultural area and then sub-divide the resulting larger Paso Robles viticultural area into 11 smaller viticultural areas.

Other Paso Robles grape growers and wine producers agree with Mr. Beckett. For example, Robert Hartenberger of Midnight Cellars (comment 80) and Bob Shore of Arroyo Robles Winery (comment 84) state that the proposed Paso Robles Westside viticultural area's climate, topography, soils, and name recognition contrast with the east side of the existing Paso Robles viticultural area, and the Paso Robles Westside region is therefore deserving of its own viticultural area designation.

In addition, some Paso Robles wine industry members express concern over the misuse of the "Westside" name. Noting that his winery uses the "Westside" claim on some wines, Erich Russell of Rabbit Ridge Winery (comment 71), states that another winery uses the "West side" name on a wine made from non-West side, and even non-Paso Robles, grapes. He states, therefore, that TTB should approve the Westside petition to stop the misuse of the Paso Robles Westside name. Gary Conway of Carmody McKnight Estate Wines (comment 114) notes that the proposed area's establishment would allow those within the area "to determine their own viticultural

future," and that "if there are some within the area who don't wish to adopt the name, there is such a simple solution for them. Don't use it."

The 125 other supportive commenters include wine consumers familiar with the Paso Robles viticultural area, as well as wine distributors, retailers, and sales personnel. Some comments largely focus on the distinctive taste of wines produced on the west side of the existing Paso Robles viticultural area, while others note the rolling topography and distinguishable climate and soils to the west of the Salinas River. Some commenters argue that, based on the 100-plus year history of the "Westside" name, recognition of the Paso Robles Westside viticultural area is long overdue and that its establishment would enhance the entire Paso Robles region's wine industry. Additional commenters offer support for evidence contained in the Westside petition, including its soil analysis section.

#### Opposing Comments

As noted above, TTB received 61 comments opposing the establishment of the Paso Robles Westside viticultural area. Of those, 43 comments were from grape growers and/or wine producers with interests in the existing Paso Robles viticultural area. In general, these 43 commenters note the location of their vineyards and describe significant variations in climate, geology, soil, and topography within the proposed Paso Robles Westside viticultural area. Some of these commenters also describe the viticultural similarities between the west and east sides of the existing Paso Robles viticultural area.

The 43 grape growers and/or wine producer commenters included two persons who withdrew their names from the Paso Robles Westside petition and two persons who were among the original 1982 Paso Robles viticultural area petitioners.

Elizabeth Van Steenwyck of Adelaida Cellars (comment 121) and Justin Baldwin of Justin Vineyards (comment 124) withdrew their names as supporting petitioners for the proposed Paso Robles Westside viticultural area. After indicating her specific reasons for her withdrawal of support for the Westside petition, Ms. Van Steenwyck concludes: "The establishment of a Paso Robles Westside AVA has little, if any, viticultural relevance, lacks geographic definition, and will not serve the best interests of the entire Paso Robles wine community in the long term." Mr. Baldwin states that the PRAVAC proposal "is more comprehensive and is

based on more sound and substantial scientific, historic, and climatic data.”

Gary Eberle (comment 86) and Herman Schwartz (comment 134), who were original 1982 Paso Robles viticultural area petitioners, also submitted comments opposing Notice No. 71. These commenters note the diversity of the proposed Paso Robles Westside viticultural area’s climate and geography and object to the use of the Salinas River as its proposed eastern boundary line. Also, they state that “Paso Robles Westside,” as a geographical term, could mislead consumers. Charging that the Paso Robles Westside petition uses “cherry picked” data and information, Mr. Eberle states: “When we created such a large and diverse AVA we knew that down the line there would be a movement to create smaller AVAs within the area \* \* \* based on sound viticultural and scientific information. Unfortunately, an application for the Paso Robles Westside AVA has been filed that is the antithesis of this.” Concerning geographical diversity, Mr. Schwartz remarked: “Most experienced wine people in our area are keenly aware of the vast differences in the proposed new Westside appellation that runs the gamut from one of the hottest, flattest and driest areas in the entire North County of San Luis Obispo to one of the more moderate in temperature, slightly rolling hills and the highest rainfall in our county, let alone the varieties of soil types and the quantity and quality of the water.”

While most opposing commenters supported other plans to divide the existing Paso Robles viticultural area into smaller viticultural areas, some did not. For example, Richard Sauret, president of the Independent Grape Growers of the Paso Robles Area, a group of 195 growers, states (comment 213): “As a native of Paso Robles and a grape grower for 55 years I didn’t think I would ever see a political fiasco of this magnitude in Paso Robles.” Mr. Sauret opposes all efforts to sub-divide the existing Paso Robles viticultural area, including the Paso Robles Westside petition and the petitions submitted by the PRAVAC.

The PRAVAC submitted a lengthy opposing comment (comment 98) on behalf of its 59 grape-grower and winery members. According to PRAVAC, its members farm approximately 1,700 acres and own 15 wineries in the portion of the existing Paso Robles viticultural area that is west of the Salinas River. As noted above, the PRAVAC submitted a petition to TTB to expand the existing Paso Robles viticultural area and 11 petitions to sub-

divide the area, as expanded, into smaller viticultural areas. The PRAVAC notes that 5 of the 11 proposed smaller viticultural areas lie wholly or partially west of the Salinas River, that is, within the proposed Paso Robles Westside viticultural area. Two of those proposed viticultural areas lie on both the east and west sides of the Salinas River and thus would overlap the proposed Paso Robles Westside viticultural area, and the other three lie wholly within it.

The “Westside” name, according to the PRAVAC, is not locally or nationally known to refer to the proposed viticultural area and is confusing, misapplied, and inappropriate in the context of the petition. The “Westside” name, the PRAVAC states, refers to a much smaller area, limited to a portion of the City of Paso Robles and the entire Adelaida District, but not extending to the northern or southern limits of the proposed Paso Robles Westside viticultural area boundary line.

The PRAVAC claims that the Paso Robles Westside viticultural area petition lacks adequate scientific support and justification. The PRAVAC notes that its research shows that the climate and geographic features of the proposed Paso Robles Westside viticultural area fail to distinguish it from the Paso Robles area east of the Salinas River. In support of this contention, the PRAVAC comment includes a point-by-point rebuttal of the Paso Robles Westside petition researched and written by Dr. Deborah Elliott-Fisk, an ecology professor at the University of California, Davis. Dr. Elliott-Fisk explains that she conducted recent in-depth scientific research of the Paso Robles viticultural area that contributed to the development of the one expansion petition and the 11 new establishment petitions submitted by the PRAVAC.

Dr. Elliott-Fisk argues that the Salinas River does not divide the existing Paso Robles viticultural area into two distinct east-west regions based on climate, geology, soils, topography, elevation, landforms, or natural vegetation. She states that viticultural conditions within the existing Paso Robles viticultural area change from north to south instead of from east to west. Noting that climates change along gradients in latitude, longitude, maritime and continental position, elevation, orographic position, and other physical parameters, Dr. Elliott-Fisk states that the existing Paso Robles viticultural area “shows incredible diversity in vineyard geographics and viticultural environments, from an almost desert climate in the north to a maritime climate in the central portion to a cold,

wet mountain climate to the south.” In addition, she also contends that no soil series found in the proposed Paso Robles Westside viticultural area is unique to that area. Based on her research, Dr. Elliott-Fisk concludes that “[t]he proposed Paso Robles Westside viticultural area makes no sense from a historical, geographical, or viticultural perspective” and that “[t]he flawed and deficient petition does not support the establishment of the proposed Paso Robles Westside AVA.”

The PRAVAC comment thus urges TTB to reject the Paso Robles Westside viticultural area petition. As an alternative, PRAVAC suggests TTB consolidate into one public notice the Paso Robles Westside viticultural area petition with the 12 PRAVAC petitions to expand and sub-divide the existing Paso Robles viticultural area. The commenter also requested a public hearing if TTB decides to proceed with rulemaking for the Paso Robles Westside viticultural area.

Other opposing grape growers and wine producers also comment that the supporting data for the Paso Robles Westside viticultural area petition is, at times, inadequate or wrong. They believe that the scientific data provided in the petition does not support establishment of the Paso Robles Westside viticultural area. They also note that the climate, soils, elevation, natural vegetation, and other geographical features of the proposed Paso Robles Westside viticultural area fail to distinguish it from other parts of the larger Paso Robles viticultural area. Further, some commenters state that the cooling marine influence coming through the Templeton Gap affects certain portions of the proposed viticultural area more than other areas, and that the marine influence significantly affects some portions of the Paso Robles viticultural area east of the Salinas River.

According to comments of some opposing wine industry members, the Salinas River, as the eastern boundary line for the proposed Paso Robles Westside boundary line, is an oversimplification of regional viticultural differences that could have long-range negative implications for other Paso Robles viticultural area petitions. Other commenters claim the “Westside” name is ambiguous or vague and could confuse and mislead consumers.

The 18 opposing commenters who are neither grape growers nor wine producers include wine consumers, local residents, and scientists with expertise in climate, soil and geology. Some of these commenters describe the Paso Robles Westside viticultural area

petition as a wine industry marketing effort. A local resident states that the proposed Paso Robles Westside viticultural area "includes a wide diversity of land, climate, geology and soils as to be a completely arbitrary division." Other commenters contend, similar to the PRAVAC, that the recognized "west side" of the Paso Robles region encompasses only a western portion of the City of Paso Robles and the Adelaida District, not the significantly larger proposed Paso Robles Westside viticultural area.

Dr. Thomas Rice, a certified professional soil scientist who provided soil information for the Paso Robles Westside viticultural area petition, submitted two comments opposing Notice No. 71 (comments 94 and 129). In his opposing comments, Dr. Rice states that some of his soils information "has been inaccurately quoted" and that "some erroneous conclusions regarding the soils in the Paso Robles AVA have been stated in the final petition." He adds that "not a single soil series mapped by the USDA that occurs within the proposed Paso Robles Westside AVA is unique to that area." He concludes by urging TTB "to reject the Paso Robles Westside petition based on its inaccurate, misleading and false statements related to topography and soils diversity within the larger Paso Robles AVA."

Opposing commenter Richard Hoenisch (comment 112), a plant pathologist at the University of California, Davis, and the education director for the western region of the National Plant Diagnostic Network, explains that he served for six years as the founding manager of the Tablas Creek Winery in Paso Robles. Mr. Hoenisch states that, based on his past and current experience and knowledge, the proposed Paso Robles Westside viticultural area "includes too many different geologies, soil types, and micro-climates." Mr. Hoenisch concludes that the Paso Robles area contains many distinct and excellent potential viticultural area sites.

Mr. Donald Schucraft, a certified consulting meteorologist with the Western Weather Group, explains in his opposing comment (comment 122) that in the mid-1990's he led a team of meteorologists and physical scientists that established a network of automated weather stations in the Paso Robles region, and that these stations continue to provide key information for localized Paso Robles weather forecasts. Based on the data from these stations, Mr. Schucraft states that the Salinas River does not provide a suitable boundary line for the many different

microclimates found in the Paso Robles viticultural area. He notes that there are distinct microclimates to the west of the Salinas River within the proposed Paso Robles Westside viticultural area, and that these microclimates change from north to south as well as to east to west.

Seasonal rainfall, according to Mr. Schucraft, varies from 11 to 12 inches in the northern-most part of the proposed Paso Robles Westside viticultural area to 27 to 28 inches in the southern-most part. Also, air temperatures, influenced by the marine air passing through the Templeton Gap, and wind speeds, influenced by the Salinas River Valley Basin, vary widely within the proposed viticultural area. Mr. Schucraft concludes that observed weather in the Paso Robles region fails to define the proposed Paso Robles Westside viticultural area as a single viticultural region, but instead supports the existence of multiple viticultural regions within the existing Paso Robles viticultural area.

#### TTB Finding

TTB notes that there is a marked lack of unanimity among the commenters concerning the appropriateness of establishing the proposed Paso Robles Westside viticultural area. While substantial petition evidence and a large number of comments support the establishment of the proposed viticultural area, we also received a significant number of comments setting forth information that refutes, or is otherwise inconsistent with that petition evidence. Some of those comments challenge the appropriateness of the Paso Robles Westside name. Other commenters, including scientific experts, contradict the geographical feature evidence presented in the petition and relied upon by TTB in Notice No. 71 as a basis for proposing the establishment of the Paso Robles Westside viticultural area.

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," or that the area described in Notice No. 71 is distinguishable by geographical features. Accordingly, TTB hereby withdraws its proposal to establish the Paso Robles Westside viticultural area.

With regard to the petitions submitted by the PRAVAC to establish 11 smaller viticultural areas within the Paso Robles viticultural area, TTB will review those 11 petitions independently from this regulatory action. A notice regarding the PRAVAC proposal to expand the existing Paso Robles viticultural area was published in the **Federal Register**

on July 15, 2008 (see Notice No. 85, 73 FR 40474).

Signed: February 12, 2009.

**John J. Manfreda,**  
Administrator.

Approved: February 27, 2009.

**Timothy E. Skud,**

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

[FR Doc. E9-9855 Filed 4-29-09; 8:45 am]

BILLING CODE 4810-31-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[USCG-2009-0110]

RIN 1625-AA00

### Safety Zone; Thunder on Niagara, Niagara River, North Tonawanda, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes establishment of a safety zone for a powerboat race in the Captain of the Port Buffalo zone. This proposed rule is intended to restrict vessels from areas of water during events that pose a hazard to public safety. The safety zone established by this proposed rule is necessary to protect spectators, participants, and vessels from the hazards associated with a powerboat race.

**DATES:** Comments and related materials must be received by the Coast Guard on or before June 29, 2009. Requests for public meetings must be received by the Coast Guard on or before May 29, 2009.

**ADDRESSES:** You may submit comments identified by docket number USCG-2009-0110 using one of the following methods:

(1) *Federal eRulemaking Portal:*  
<http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the