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SOMETHING TO WINE ABOUT: WHAT PROPOSED REVISIONS TO WINE LABELING REQUIREMENTS MEAN FOR GROWERS, PRODUCERS, AND CONSUMERS

ABSTRACT

Title 27 of the Code of Federal Regulations governs the standards for the information that is printed on wine bottle labels, including the appellation of origin. Currently, however, wines are exempt from these regulations if they will not be introduced in interstate commerce. There is a proposed amendment to the Code that would bring all wines, regardless of whether they are sold interstate or solely intrastate, under the federal standards for wine labeling. Between the current system, which permits exempt wines to sidestep the regulations, and the proposal, which would exact strict standards of compliance uniformly, lies a middle-ground approach that would apply federal regulation to all wines while also defining the distinction between appellations of origin and identification of grape sources. This compromise is the solution in the best interests of grape growers, who often ship their grapes and grape juice to winemakers across the country; wine producers, whether or not their wines are produced in federally protected viticultural areas; and consumers, whose wine bottle labels will have more precise information about the wine and its grapes.

INTRODUCTION

The wine bottle label is typically the primary source of information that the average consumer has about a wine before they open the bottle and taste its contents. Therefore, it is vitally important that the label provides accurate and comprehensive information about the wine, particularly about the grapes from which it was produced. *Goût de terroir* means the taste of the soil.¹ In the wine context, the idea is that a wine's flavors are distinctive of where its grapes were grown.² The environment and soil affect the grapes produced, which ultimately create wines with unique characteristics and tastes. A wine whose label refers to its grapes being sourced from a particular region can signal to the consumer what can be expected of the wine's quality and flavor. In the United States, the law governing the labeling and advertising of wine is codified under Title 27 of the Code of Federal Regulations (CFR) at parts 4 and 24. The law requires that certain information must be printed on wine bottle labels. Required information includes the brand name, the wine class or type, the bottler's name and

1. Richard Mendelson, *U.S. Wine Law: An Overview*, in WINE IN AMERICA: LAW AND POLICY 1, 11 (Richard Mendelson ed., 2011).

2. *Id.*

location, and the wine's alcohol, sulfite, and net contents.³ Optional information includes standards such as the vintage year, the appellation of origin, the grape varieties, the flavor profile, and the vineyard that produced the grapes.⁴ The wine label must be approved by the Alcohol and Tobacco Tax and Trade Bureau (TTB), a bureau within the Department of the Treasury.⁵ A wine must have a Certificate of Label Approval (COLA) from the TTB in order to be sold.⁶

Alternatively, under the current requirements, a wine does not require a COLA if it "is covered by a certificate of exemption from label approval."⁷ Wine producers do not need to obtain a COLA if they can show that "the wine to be bottled or packed is not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced in interstate or foreign commerce."⁸ If exempt, producers do not have to comply with any of the federal regulations regarding the labeling and advertising of their wine so long as they mark on their bottles that the wine is for sale only in the state where the wine is bottled.⁹

One issue that arises is a loophole wherein exempt producers would be able to reference an appellation of origin without having to meet the TTB standard for usage.¹⁰ An appellation of origin expresses general "geographic information about the source of the grapes used to make the wine."¹¹ In the United States, an appellation of origin may be the "United States" or "American"; a state or no more than three states, all of which must be contiguous; a county or no more than three counties in the same state; or an American viticultural area (AVA).¹² An AVA is a grape-growing region that was created by petition to and approval of the TTB.¹³ The significance of appellations of origin, and specifically of AVAs, is the

3. 27 C.F.R. §§ 4.32, 24.257 (2018); *see also* CAROL ROBERTSON, *THE LITTLE RED BOOK OF WINE LAW: A CASE OF LEGAL ISSUES* 138–39 (2008) (describing the information that the law requires to be on wine bottle labels).

4. 27 C.F.R. §§ 4.20–28 (2018); *see also* ROBERTSON, *supra* note 3, at 138 (noting that additional, non-mandatory information may also be included on wine bottle labels).

5. ROBERTSON, *supra* note 3, at 139.

6. *Id.*

7. 27 C.F.R. § 24.257(a)(4)(ii)(A) (2018).

8. 27 C.F.R. § 4.50(b).

9. John Trinidad, *Protecting Wine Origins is Pro-Consumer and Pro-Industry*, DICKENSON PEATMAN & FOGARTY: LEX VINI (Dec. 18, 2016, 8:00 PM), <https://www.dpf-law.com/blogs/lex-vini/protecting-wine-origins-pro-consumer-pro-industry/>.

10. Proposed Revisions to Wine Labeling and Recordkeeping Requirements, 81 Fed. Reg. 40584, 40586 (proposed June 22, 2016) (to be codified at 27 C.F.R. pts. 4, 24), <https://www.gpo.gov/fdsys/pkg/FR-2016-06-22/pdf/2016-14696.pdf>.

11. Wendell Lee, *Labeling and Advertising*, in *WINE IN AMERICA: LAW AND POLICY*, *supra* note 1, at 79, 83.

12. *Id.* at 83–84. *See also* Proposed Revisions to Wine Labeling and Recordkeeping Requirements, *supra* note 10, at 40585 (describing the American appellations of origin).

13. Richard Mendelson & Scott Gerien, *Wine Brands and Appellations of Origin*, in *WINE IN AMERICA: LAW AND POLICY*, *supra* note 1, at 217, 251.

notion that the geographical source of the grapes imbues the resulting wine with certain traits and characteristics unique to their environment and that particular areas indicate a reputation of well regard and excellence.¹⁴ As of February 2019, there are 244 established AVAs, such as Finger Lakes in New York, Puget Sound in Washington, and perhaps most famously, Napa Valley in California.¹⁵ It is likely that even the layperson with no specialized knowledge about wine would be able to name at least one AVA. Such is the value of the AVA—it gives prominence to exemplary American wine-producing regions and allows the attribution of a “quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin.”¹⁶

The American wine appellation system has several layers of possible nomenclature; some are based on political classifications, while others were specifically designed for the wine industry.¹⁷ Each level of appellation has a different requirement for what percentage of grapes in a wine must originate from that area and for where the wine must be finished and bottled.¹⁸ If the broad United States or American appellation is used, at least 75 percent of the grapes are from the United States, and the wine was fully finished in the United States.¹⁹ If a single state appellation is used, 75 percent of the grapes are from the labeled state, and the wine was fully finished in the labeled or an adjacent state.²⁰ If labeled with a county appellation, the minimum composition requirement is 75 percent from the county indicated, and the wine was fully finished within the state in which the labeled county is located.²¹ If a multistate appellation is used, all the grapes must be grown in the states indicated, the percentage of the wine’s grapes derived from each state must be shown on the label, and the wine was fully finished in one of the labeled states.²² If a multicounty appellation is used, all the grapes must be grown in the counties indicated, and the label must show the percentage of the wine’s grapes that are derived from each county.²³

14. *Famous Appellations of Origin*, WORLD INTELL. PROP. ORG. MAG. (Dec. 2008), http://www.wipo.int/wipo_magazine/en/2008/06/article_0009.html.

15. *Established American Viticultural Areas*, ALCOHOL & TOBACCO TAX & TRADE BUREAU, https://www.ttb.gov/wine/us_by_ava.shtml (last updated Feb. 19, 2019).

16. *American Viticultural Area (AVA)*, ALCOHOL & TOBACCO TAX & TRADE BUREAU, <https://www.ttb.gov/wine/ava.shtml> (last updated Sept. 15, 2017).

17. Alyson M. Chouinard, *Wine Appellation Regulation in the U.S. and France as a Response to Globalization*, 3 INQUIRIES J. (2011), <http://www.inquiriesjournal.com/articles/360/wine-appellation-regulation-in-the-us-and-france-as-a-response-to-globalization>.

18. Lee, *supra* note 11, at 83–84.

19. 27 C.F.R. § 4.25(b) (2018).

20. *Id.*

21. *Id.*

22. 27 C.F.R. § 4.25(d).

23. 27 C.F.R. § 4.25(c)–(d). Unlike the other American appellations of origin, the multicounty appellation does not require that the wine be fully finished within the geographic area designated.

For a wine to be labeled with an AVA, the TTB requires that at least 85 percent of the grapes must have been grown in the AVA, and the wine must be finished and bottled in the state, or one of the states, within which the AVA is located.²⁴ For example, if a wine from the Yakima Valley AVA in Washington is to be sold in interstate commerce, it will require a COLA. To obtain a COLA, 85 percent of the wine's grapes must have been grown in Yakima Valley, and the wine must have been bottled within Washington State. Alternatively, a COLA-exempt wine that will be sold only intrastate can use the AVA designation "Yakima Valley" without having to meet the COLA regulations. A wine produced with grapes from Yakima Valley and bottled in New York may still be labeled "Yakima Valley" if the producer certifies that the wine will be sold only in the state of New York and not "otherwise introduced in interstate . . . commerce."²⁵ This so-labeled Yakima Valley wine might not meet the 85 percent requirement or have any connection to Yakima Valley other than its grapes were grown there before being shipped to its finishing winery in New York. The concern of some in the wine industry and Congress is that such use of AVA names on COLA-exempt wines is inaccurate, "undermines the best interests of the consumer," erodes the AVA system generally, and therefore, should no longer be permitted.²⁶

In June 2016, the TTB proposed amending the CFR to bring all wines, whether COLA-exempt or not, or whether to be sold interstate or only intrastate, under the federal standards regarding the use of appellations of origin on wine labels.²⁷ If this amendment were to pass, any wine that indicates an appellation of origin on its label would have to meet the minimum composition percentage and the finishing requirements as necessitated by the level of appellation invoked. Supporters believe that the amendment would help to prevent COLA-exempt producers from "unfairly benefit[ing] from the goodwill and brand recognition" that are attached to certain AVAs and to increase consumer confidence that the wine meets the production standards and regulations of the named AVA.²⁸ Opponents believe that increased strictness would destabilize the industry by removing a revenue stream for growers who sell their grapes for out-of-state wine production and by hindering the selling power of producers who source

Jim Chen, *A Sober Second Look at Appellations of Origin: How the United States Will Crash France's Wine and Cheese Party*, 5 MINN. J. GLOBAL TRADE 29, 44 (1996).

24. 27 C.F.R. § 4.25(e)(3) (2018).

25. 27 C.F.R. § 4.50(b).

26. Proposed Revisions to Wine Labeling and Recordkeeping Requirements, *supra* note 10, at 40586.

27. *Id.*

28. Letter from Linda J. Reiff, President & CEO, Napa Valley Vintners, to Amy Greenberg, Dir. of Regulations & Rulings Div., Alcohol & Tobacco Tax & Trade Bureau 2 (Aug. 22, 2016), <https://www.regulations.gov/contentStreamer?documentId=TTB-2016-0005-0056&attachmentNumber=1&contentType=pdf>.

their grapes from out-of-state AVAs but would be prohibited from truthfully naming that AVA on their labels.²⁹

However, there is a difference between the “designations of wine origin and the identification of grape sources.”³⁰ A designation of wine origin highlights the close connection between where the grapes were grown and where the wine was produced, finished, and bottled. Appellations of origin, and particularly AVAs, identify wine origin—where a wine’s grapes were grown and where the wine was finished is one bounded and defined place. Meanwhile, an identification of grape sources merely indicates where the grapes were grown, which may be distinct from where the wine was ultimately finished. Wineries that source their grapes from AVAs should be allowed to indicate that grape source but with a label that would not lead consumers to think that the wine was produced or bottled in that AVA.³¹

This Note argues in support of a middle-ground approach to wine labeling that brings all use of appellations of origin under the CFR standards, regardless of whether the wine is COLA-exempt, but also enables producers who source their grapes from AVAs to accurately designate where those grapes were grown. This compromise would preserve the renowned reputation of certain AVAs and winemakers in those areas and also allow producers to continue to receive shipments from growers in better-yielding grape-producing regions, all while delivering to consumers more and accurate information about wine and its grape sources.

Part I of this Note summarizes the history of wine regulation in the United States and the authority of the TTB. Part II discusses the elements of a wine label and the process of attaining TTB approval. Part III reviews the amendment proposed by the TTB, analyzes its positive and negative aspects, and synthesizes a compromise that would still protect the AVA system, growers, producers, and consumers.

I. HISTORY OF WINE REGULATION IN THE UNITED STATES

A. PRE-PROHIBITION

Grape growing and winemaking in the United States began when Europeans settled in the American colonies.³² By the mid-1800s, wine

29. Alexandra Caluen, Comment 16 on Notice No. 160: Proposed Revisions to Wine Labeling and Recordkeeping Requirements (Aug. 22, 2016), <https://www.regulations.gov/document?D=TTB-2016-0005-0018>.

30. Letter from Linda J. Reiff, President & CEO, Napa Valley Vintners, & Robert P. Koch, President & CEO, Wine Institute, to Amy Greenberg, Dir. of Regulations & Rulings Div., Alcohol & Tobacco Tax & Trade Bureau 2–3 (Dec. 6, 2016), <https://www.regulations.gov/contentStreamer?documentId=TTB-2016-0005-0111&attachmentNumber=1&contentType=pdf>.

31. *Id.*

32. Mendelson, *supra* note 1, at 1–2.

production was an established industry.³³ Early American winemakers modeled their practices on the styles and nomenclature of their European counterparts, who encouraged Americans “to adopt the Old World³⁴ appellation system” so that their labels would agree with each other.³⁵ At the same time, the temperance movement gained momentum across the country.³⁶ Local jurisdictions and states started going dry, prohibiting or strictly regulating the manufacture and sale of alcohol.³⁷ On December 18, 1917, Congress passed a joint resolution proposing a national prohibition, and on January 16, 1920, the Eighteenth Amendment went into effect.³⁸ The Amendment prohibited the “manufacture, sale, or transportation of intoxicating liquors” in the United States.³⁹ During Prohibition, winemaking was limited to certain authorized uses, such as medicinal wine, sacramental wine, or wine for non-beverage purposes.⁴⁰ In the end, the Prohibition experiment failed to change the drinking habits of Americans, and on December 5, 1933, Prohibition ended with the ratification of the Twenty-First Amendment.⁴¹

B. POST-PROHIBITION

The fourteen-year national prohibition set back American winemaking traditions, which were already much weaker than those in the Old World.⁴² After the repeal of Prohibition, wine consumption in the United States gradually increased, and the industry began to develop a patently American wine culture.⁴³ As wine regions established themselves and thrived, producers began to promote their wines based on these local identities, which became known to and sought out by consumers.⁴⁴ One of the early

33. *Id.*

34. The term “Old World” refers to “countries that are considered the birthplaces of wine,” such as France, Spain, and Italy, whereas “New World” generally means wine-making countries like the United States, Australia, and South Africa. *The Guide to Old World Wine vs. New World Wines*, VINEPAIR, <https://vinepair.com/wine-101/guide-old-world-vs-new-world-wines/> (last visited Jan. 9, 2019).

35. Lindsey A. Zahn, *Australia Corked Its Champagne and So Should We: Enforcing Stricter Protection for Semi-Generic Wines in the United States*, 21 *TRANSNAT’L L. & CONTEMP. PROBS.* 477, 485 (2012).

36. Mendelson, *supra* note 1, at 2–3. Excessive drunkenness became a national problem by the early 19th century, and American alcohol consumption during this time was about 26.5 liters per capita. *Id.* at 4. By contrast, in modern times, the figure is about 9.2 liters per capita. WORLD HEALTH ORG., *GLOBAL ALCOHOL REPORT: U.S.* (2014), http://www.who.int/substance_abuse/publications/global_alcohol_report/profiles/usa.pdf.

37. Mendelson, *supra* note 1, at 5.

38. *Id.* at 8.

39. U.S. CONST. amend. XVIII, § 1 (repealed 1933).

40. Mendelson, *supra* note 1, at 9.

41. *Id.* at 9–10; *see also* U.S. CONST. amend. XXI.

42. Chen, *supra* note 23, at 42.

43. Zahn, *supra* note 35, at 485.

44. Michael Maher, *On Vino Veritas? Clarifying the Use of Geographic References on American Wine Labels*, 89 *CAL. L. REV.* 1881, 1908 (2001).

issues that arose as American wines gained popularity was how to modernize wine labeling laws and design an American appellation system that was modeled after but distinct from the Old World systems, which were disfavored by the American wine industry on the grounds that Europe's traditional and rigorous standards ran counter to the modern spirit of American viticulture.⁴⁵

The American appellation system was meant "to promote and market domestic wines as authentic products of place."⁴⁶ To do so effectively, federal labeling standards had to become more precise because the post-repeal regulations were "so loose as to be practically meaningless."⁴⁷ For instance, labels could name geographic locations, but there was practically no formal definition for the exact and bounded locations that the references sought to indicate.⁴⁸ A wine whose label named a particular grape variety only had to be 51 percent composed of that grape, meaning that 49 percent of its composition could be of any other unnamed variety.⁴⁹ The legislative intent of the label regulations was to protect consumers from being misled by American wine labels.⁵⁰ Minimum composition requirements were developed as a "'reasoned and amply elucidated' application of a statutory standard" to avoid consumer confusion.⁵¹ The Federal Alcohol Administration (FAA) Act of 1935 established the regulation of the bottling, packaging, labeling, and marketing of wine.⁵² In 1975, the Bureau of Alcohol, Tobacco, and Firearms (ATF),⁵³ within the Department of Justice, began a rulemaking process for certain label subjects, such as varietal names and appellations of origin.⁵⁴

The first proposal, set forth in 1976, created seal wines, a category of wines that would be strictly regulated.⁵⁵ Wines eligible for a seal had to indicate that their grapes were grown in either an officially designated

45. RICHARD MENDELSON, FROM DEMON TO DARLING: A LEGAL HISTORY OF WINE IN AMERICA 138 (2009) [hereinafter MENDELSON, FROM DEMON TO DARLING].

46. *Id.* at 141.

47. *Id.*

48. Maher, *supra* note 44, at 1891.

49. MENDELSON, FROM DEMON TO DARLING, *supra* note 45, at 141 (citing 27 C.F.R. § 4.23(a) (1938)).

50. Maher, *supra* note 44, at 1906.

51. Chen, *supra* note 23, at 45 (citing *Wawszkiewicz v. Dep't of the Treasury*, 670 F.2d 296, 302–03 (D.C. Cir. 1981) (quoting 27 U.S.C. § 205(e)(1) (1988))).

52. 27 U.S.C. §§ 201–19a (2012).

53. The Homeland Security Act of 2002 divided the ATF into two separate agencies: the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice and the TTB in the Department of the Treasury. Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135, 2274–75. The former is a law enforcement agency, whereas the latter is a tax-collecting and trade regulation agency. *Id.* at 2275. Therefore, actions described in this Note prior to January 24, 2003 were taken by the ATF, and those after that date were taken by the TTB. *Id.* at 2142.

54. MENDELSON, FROM DEMON TO DARLING, *supra* note 45, at 143.

55. *Id.* at 144.

vineyard or a “viticultural area,” an ATF-recognized, bounded grape-growing region that had distinctive geographical features.⁵⁶ For a seal to be awarded, the wine had to meet high standards: to name a certain viticultural area or vineyard, at least 95 percent of the wine’s grapes had to be grown in that area.⁵⁷ If a seal wine wanted to indicate a varietal type, at least 85 percent of the wine had to be of that variety.⁵⁸ By contrast, a non-seal wine could follow the old, more relaxed rule where only 51 percent of the wine had to be of a certain variety in order to use the name.⁵⁹ Ultimately, the concept of the seal was considered confusing and was opposed both by the wine industry and by consumers. The industry worried that a seal would be seen as “a mark of approval, a sanction of quality.”⁶⁰ Consumers agreed that the seal would be interpreted as a symbol of quality without offering any guarantees of quality.⁶¹ The ATF abandoned this proposal as it did not want the seal to be mistakenly taken as a signal of government endorsement for the wine.⁶²

In 1977, the ATF recategorized viticultural areas and vineyards as “controlled appellations” and created a new category of “political appellations,” which were pre-existing bordered regions, like counties, states, and the country.⁶³ To name a controlled appellation, at least 85 percent of a wine’s grapes had to originate from that area; to name a political appellation, the requirement was at least 75 percent.⁶⁴ The varietal type requirement was modified to be 75 percent for all wines, and all of the varietal had to be grown in the appellation named.⁶⁵ If the wine contained a mix of varietals, the percentage breakdown would have to be shown on the label.⁶⁶

The final rule was issued in 1978. The earlier proposals were criticized by American winemakers who rejected the rigid controls, which were seen

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. William Rice, *The Seal Proposal*, WASH. POST (Mar. 3, 1977), https://www.washingtonpost.com/archive/lifestyle/1977/03/03/the-seal-proposal/2c5e3108-34ff-4434-8962-28e8226eef22/?utm_term=.afbeb6207e62.

61. *Id.*

62. MENDELSON, FROM DEMON TO DARLING, *supra* note 45, at 144.

63. *Id.* As a result of this backing away from vineyard regulation, vineyards today have no officially recognized boundaries. Richard Mendelson, *Steps to Enhance Credibility of AVAs*, WINES & VINES (Aug. 2016), <https://www.winesandvines.com/columns/section/26/article/172305/Steps-to-Enhance-Credibility-of-AVAs> [hereinafter Mendelson, *Steps to Enhance Credibility of AVAs*]. Some in the industry believe that the TTB should make official vineyard designations in order to provide consumers with more “reliable and verifiable information” about the wines they drink. *Id.*

64. MENDELSON, FROM DEMON TO DARLING, *supra* note 45, at 144.

65. *Id.*

66. *Id.* at 145.

as too strict and traditional.⁶⁷ The ATF conceptualized and adopted a formal appellation system around the idea of the AVA, which is a bounded grape-growing region that has distinctive viticultural characteristics and a recognized name.⁶⁸ The producers' ability to explore and nurture a specific area for its unique properties represented the New World's innovation and development. For an AVA to be created, an interested party had to submit a petition to the ATF, which may approve the request.⁶⁹ The petition must include: (1) name evidence;⁷⁰ (2) boundary evidence;⁷¹ (3) distinguishing features;⁷² and (4) maps and boundary description.⁷³ Once an AVA has been established, its name can be used on wine labels where at least 85 percent of a wine's grapes originated from that area.⁷⁴ If a label designates either the varietal term or the vintage year, then it is required to also indicate the appellation of origin.⁷⁵ All wines whose labels state an appellation of origin must follow the minimum composition percentage and the finishing requirements corresponding to the level of appellation used.

II. WINE LABEL CONSTRUCTION

The FAA Act governs the bottling, packaging, labeling, and marketing of wine.⁷⁶ The legislative intent behind the FAA Act was to prevent deceptive practices in the alcoholic beverages industry that would harm

67. Mendelson, *Steps to Enhance Credibility of AVAs*, *supra* note 63.

68. *Id.*; MENDELSON, FROM DEMON TO DARLING, *supra* note 45, at 145.

69. MENDELSON, FROM DEMON TO DARLING, *supra* note 45, at 145. Today, an interested party submits an AVA petition to the TTB, which considers the petition and decides what action to take. 27 C.F.R. § 9.11 (2018).

70. Evidence must show that the name for the proposed AVA is either nationally or locally known to be the name of the viticultural area. 27 C.F.R. § 9.12(a)(1). Sources must show that the name is used to describe or discuss the area and can include maps, books, newspapers, magazines, promotional materials, and statements from local residents who have knowledge of the name and its use. 27 C.F.R. § 9.12(a)(1)(ii).

71. Evidence must define the boundary of the proposed AVA. 27 C.F.R. § 9.12(a)(2). The petition must describe similarities within the bounded area and explain "how those elements are different in the adjacent areas" outside the bounded area. *Id.*

72. Evidence must describe the features of the proposed AVA that affect and distinguish that area's viticulture from adjacent areas' viticulture. 27 C.F.R. § 9.12(a)(3). Sources that demonstrate distinct viticultural features include information about the area's climate, geology, soils, topography, geographical formations, bodies of water, irrigation resources, and elevation. 27 C.F.R. § 9.12(a)(3)(i)–(v).

73. A map from the United States Geological Survey must show the exact location and boundary of the proposed AVA. 27 C.F.R. § 9.12(a)(4)(i). The petition must provide a narrative description of the unbroken boundary that refers to easily discernable features, like political entity lines, roads and trails, contour or elevation lines, rivers, streams, elevation points, and bridges or other human-made features. 27 C.F.R. § 9.12(a)(4)(ii).

74. 27 C.F.R. § 4.25(e)(3); *see also* MENDELSON, FROM DEMON TO DARLING, *supra* note 45, at 145 (detailing the AVA grape-source requirement).

75. 27 C.F.R. §§ 4.23, 4.27 (2018); *see also* Maher, *supra* note 44, at 1891–92 (discussing the evolution of the federal wine labeling rules).

76. 27 U.S.C. §§ 201–19a (2012).

producers and consumers.⁷⁷ The FAA Act empowers the TTB to regulate wine labeling so as to prevent consumer deception and to provide the consumer with adequate information about the product.⁷⁸ Every wine label must be reviewed by the TTB before the bottle can enter into commerce.⁷⁹ The COLA aids in the enforcement of the FAA Act's labeling requirements.⁸⁰ The producer must submit a sample label and Form 5100.31 Application for and Certification/Exemption of Label/Bottle Approval to the TTB, which will review and either issue or deny a COLA or COLA exemption.⁸¹

To apply for and receive a COLA exemption, the producer must satisfactorily show that the wine will not be sold in interstate commerce.⁸² The COLA exemption was not intended to be the regulatory loophole that some perceive it to be, but rather, the purpose of the exemption was to account for and accommodate unintended setbacks in a winemaker's distribution schedule. It may take a moderately sized winery over two months to plan, create, and print a new label.⁸³ Then, TTB's standard label review process takes about ten days to complete.⁸⁴ Winemakers have to follow a strict schedule in order to harvest grapes, produce wine, and store bottles efficiently.⁸⁵ If their labels are rejected by the TTB, for whatever reason, these timetables may be disrupted. One objective of the COLA exemption was so that wineries could at least still sell the wine within the state where it was produced.⁸⁶

A wine label must include: (1) the brand name under which the wine is sold;⁸⁷ (2) the class or type of wine;⁸⁸ (3) the name and address of the

77. Maher, *supra* note 44, at 1887–88 (citing *Adolph Coors Co. v. Brady*, 944 F.2d 1543, 1547 (10th Cir. 1991)).

78. 27 U.S.C. § 205(e) (2012).

79. Lee, *supra* note 11, at 77.

80. Procedures for the Issuance, Denial, and Revocation of Certificates of Label Approval, Certificates of Exemption from Label Approval, and Distinctive Liquor Bottle Approvals, 64 Fed. Reg. 2122, 2123 (Jan. 13, 1999) (to be codified at 27 C.F.R. pts. 4, 5, 7, 13, 19), <https://www.gpo.gov/fdsys/pkg/FR-1999-01-13/pdf/99-624.pdf>.

81. *Id.* at 2122; *see also* 27 C.F.R. § 4.50 (2018).

82. 27 C.F.R. § 4.50(b) (2018).

83. Lee, *supra* note 11, at 79.

84. *Annual Report Fiscal Year 2017*, ALCOHOL & TOBACCO TAX & TRADE BUREAU 17 (2017), <https://www.ttb.gov/foia/pdf/ttbar2017.pdf>.

85. Lee, *supra* note 11, at 79.

86. *Id.*

87. 27 C.F.R. §§ 4.32(a)(1), 4.33 (2018). A brand name is for marketing purposes and may not mislead the consumer about the wine's age, origin, or any other identifying characteristics. Cari B. Rincker, *Wine and Vineyard Law: Federal and New York State Licenses, Permits and Regulations*, JD SUPRA 18 (Dec. 15, 2015), <http://documents.jdsupra.com/8846f2e6-1091-49afb7f6-4525f554da05.pdf>.

88. 27 C.F.R. §§ 4.32(a)(2), 4.34 (2018). Wines are divided into nine classes, each of which describes the taste, production, method, and composition of the wine. Rincker, *supra* note 87, at 24. Grape wine, for instance, is the class of wines that were produced by normal alcoholic fermentation of grapes. *Id.* Table wine and dessert wine are types within that grape wine class. *Id.*

bottler or packer;⁸⁹ (4) the wine's alcohol,⁹⁰ sulfite,⁹¹ and net contents;⁹² and (5) a government warning statement.⁹³

Other standards of identity that may be included on the label are: (1) the varietal term;⁹⁴ (2) the vintage year;⁹⁵ and (3) the appellation of origin.⁹⁶ If a label designates either the varietal term or the vintage year, then it must also designate the appellation of origin.⁹⁷ An American appellation of origin is the "United States" or "American"; a state or no more than three states, all of which must be contiguous; a county or no more than three counties in the same state; or an AVA.⁹⁸ An AVA is a delimited grape-growing region, whose creation and existence is regulated by the TTB.⁹⁹

In order for a label to name an AVA, at least 85 percent of the wine's grapes must have been grown in the AVA, and the wine must be fully finished and bottled in the state, or one of the states, within which the AVA

Other classes of wine include sparkling wine, carbonated grape wine, and aperitif wine. *Id.* For further descriptions of other classes and types of wine, see 27 C.F.R. § 4.21 (2018).

89. 27 C.F.R. §§ 4.32(b)(1), 4.35 (2018).

90. 27 C.F.R. §§ 4.32(b)(3), 4.36. Alcohol content must be expressed as a percentage of alcohol by volume. 27 C.F.R. § 4.36(b). Alcohol content is only required to be stated on the label if the wine contains more than 14 percent alcohol by volume. 27 C.F.R. § 4.36(a). If a wine's alcohol content is 14 percent or less alcohol by volume, its alcohol content is not required to be indicated if its type is simply labeled "table wine." *Id.*

91. 27 C.F.R. § 4.32(e). Sulfites must be declared if sulfur dioxide is detected at a level of ten or more parts per million and if the wine will be sold in interstate commerce. *Id.* See also Rincker, *supra* note 87, at 20 (providing an example of a declaration of sulfites).

92. 27 C.F.R. §§ 4.32(b)(2), 4.37 (2018). The net contents of wine must be expressed according to authorized standards of fill. 27 C.F.R. §§ 4.37, 4.72. The most frequently seen standards of fill are 750 milliliters, which is a standard bottle of wine, and 1.5 liters, which is a magnum of wine, the equivalent of two standard bottles. Madeline Puckette, *Wine Bottle Sizes*, WINE FOLLY (Apr. 16, 2012), <http://winefolly.com/tutorial/wine-bottle-sizes/>.

93. 27 C.F.R. § 16.21 (2018). Two health warnings are required to appear on wine labels: "(1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems." *Id.*

94. 27 C.F.R. § 4.23. The varietal term indicates the dominant grape variety or varieties used to make the wine, like Cabernet Sauvignon, Chardonnay, or Zinfandel. See Madeline Puckette, *Common Types of Wine (the Top Varieties)*, WINE FOLLY (May 18, 2015), <http://winefolly.com/review/common-types-of-wine/>. New World wines are commonly identified by their varietals, as compared to Old World Wines, which are more frequently associated with their regions. Mary Gorman-McAdams, *Old World & New World Wines: What's the Difference?*, THE KITCHN (June 16, 2011), <https://www.thekitchn.com/old-world-wines-and-new-world-149176>.

95. 27 C.F.R. § 4.27 (2018). The vintage year indicates when the grapes were harvested. Rincker, *supra* note 87, at 14. If the wine comes from an AVA, at least 95 percent of its grapes must have been harvested during the indicated vintage year. JAMES A. THORNTON, *AMERICAN WINE ECONOMICS: AN EXPLORATION OF THE U.S. WINE INDUSTRY* 103 (2013). If the wine is from a non-AVA, then the requirement is that only 85 percent of the grapes had to have been harvested in the vintage year. *Id.* at 316 n.30.

96. The appellation is the geographic designation of where the grapes were grown. Lee, *supra* note 11, at 83.

97. 27 C.F.R. §§ 4.23, 4.27 (2018).

98. 27 C.F.R. § 4.25(a)(1).

99. 27 C.F.R. §§ 4.25(e), 9.11.

is located.¹⁰⁰ For example, to obtain a COLA for a wine labeled with the AVA designation “Sonoma Valley,” the wine must have been produced and bottled within California. If that wine was bottled in Texas and was intended to enter interstate commerce, in order to indicate varietal term or vintage year, it would have to use the national appellation, indicating generally that the wine is American.¹⁰¹

Conversely, a COLA-exempt wine cannot be sold in interstate commerce and does not have to comply with any of the federal labeling regulations, meaning that it does not have to meet the TTB standards of usage to name an AVA on its label.¹⁰² For example, a wine bottled in Delaware that will only be sold intrastate can use the Sonoma Valley AVA name on its label without meeting either the minimum composition requirement that 85 percent of its grapes were grown in the named AVA or the finishing requirement that the wine was finished in the state within which the AVA is located. An exempt wine can also designate the varietal term and the vintage year without having to include an appellation of origin.¹⁰³ A wine for sale in Texas only may include the varietal term or vintage year on its label without any reference to any appellation of origin as long as the producer certifies that the wine will not enter into interstate commerce and also marks the bottle as “for sale in Texas only.”¹⁰⁴

Wine labels, to unfamiliar consumers, can be difficult to parse. For instance, if a bottle reads “2015 Syrah, Château Paso Robles, Central Coast,” one may be confused as to whether the wine originated from the Paso Robles AVA or the Central Coast AVA.¹⁰⁵ Further, there is an even greater chance for misunderstanding when several nonconforming geographic terms appear, such as if a brand name indicates a location on the West Coast but the producer address is a location on the East Coast. Confusion could be greater still if a COLA-exempt wine prominently displays an AVA name on the front label while keeping its “for sale only” marking inconspicuously placed on the back label. The TTB’s proposed amendment seeks to bring all wines under federal regulations specifically to avoid or limit the risk of consumer deception that is currently possible.

100. 27 C.F.R. § 4.25(e)(3).

101. See Jeremy Siegel & John Hinman, *Review of the COLA Exemption for out of state producers*, HINMAN & CARMICHAEL LLP 5 (Aug. 15, 2016), <https://www.regulations.gov/contentStreamer?documentId=TTB-2016-0005-0011&attachmentNumber=1&contentType=pdf>.

102. See Proposed Revisions to Wine Labeling and Recordkeeping Requirements, *supra* note 10, at 40585.

103. Siegel & Hinman, *supra* note 101, at 5.

104. *Id.* at 2, 5.

105. Maher, *supra* note 44, at 1907.

III. PROPOSED AMENDMENT

In June 2016, the TTB proposed an amendment to the CFR that would require all wine labels to comply with part 4 requirements even if the wine is COLA-exempt.¹⁰⁶ This means that if the wine is labeled with an AVA, it must meet the TTB standards for usage: at least 85 percent of the wine came from grapes grown within the named AVA, and the wine was fully finished and bottled within the state, or one of the states, within which the named AVA is located.¹⁰⁷ Producers who source their grapes from out-of-state growers would no longer be able to name AVAs or specific appellations of origin even if they are only selling the wine in intrastate commerce. Their only options would be to use the broad United States or American national appellation, or nothing at all. If they choose to not name any appellation, then the vintage year and varietal type may not be identified either.¹⁰⁸

The TTB's authority to enforce federal standards on exempt wines, which are not introduced in interstate commerce, comes not from the FAA Act, but rather from the Internal Revenue Code (IRC).¹⁰⁹ Under the IRC, whether sold in intra- or interstate commerce, wines must be marked with "proper designation as to kind and origin, or, if there is no such designation known to the trade or consumers, then under a truthful and adequate statement of composition."¹¹⁰ Thus, the IRC empowers the TTB "to issue regulations requiring truthful and accurate information on wine . . . labels regarding the identity and origin of the wine."¹¹¹

A. SUPPORTERS

Supporters of the TTB's proposed amendment to the CFR have two general goals: (1) to protect producers in well-regarded AVAs and appellations; and (2) to ensure consumers that the wines they buy are authentic.¹¹² Supporters say that only local producers should be able to name an AVA on their wine labels.¹¹³ Appellations of origin and AVAs are

106. Proposed Revisions to Wine Labeling and Recordkeeping Requirements, *supra* note 10, at 40586.

107. 27 C.F.R. § 4.25(e)(3) (2018).

108. 27 C.F.R. §§ 4.23, 4.27.

109. Proposed Revisions to Wine Labeling and Recordkeeping Requirements, *supra* note 10, at 40586.

110. 26 U.S.C. § 5388(a) (2012) (emphasis added).

111. Proposed Revisions to Wine Labeling and Recordkeeping Requirements, *supra* note 10, at 40586.

112. Doug Lewis, Comment 91 on Notice No. 160A: Proposed Revisions to Wine Labeling and Recordkeeping Requirements; Comment Period Reopening (Dec. 8, 2016), <https://www.regulations.gov/document?D=TTB-2016-0005-0094>.

113. Paul Leary, Comment 34 on Notice No. 160: Proposed Revisions to Wine Labeling and Recordkeeping Requirements (Aug. 22, 2016), <https://www.regulations.gov/document?D=TTB-2016-0005-0036>.

meant to preserve and defend a quality product.¹¹⁴ This goes back to the notion of *terroir* and an essential land-product nexus.¹¹⁵ In the world of wine, a common belief is that the most prestigious regions gain their reputation because of the quality of their natural environment; the areas with the best land and climatic conditions produce the best wine.¹¹⁶ No one else should be able to use an AVA because “no one outside the locale can truly make the same product.”¹¹⁷ Exclusive control can translate to exclusive economic benefits for local producers.¹¹⁸ Geographic indicators can be used as marketing tools.¹¹⁹ Further, limiting production areas develops a regional prestige, which can add more value to the product.¹²⁰

Consider, for instance, Champagne. Champagne refers exclusively to sparkling wine made in Champagne, France, through a technical and labor-intensive process.¹²¹ Other well-known sparkling wines are those from California, prosecco from Italy, or cava from Spain.¹²² While differences can be expected due to divergences in harvest and production practices, the biggest distinction between Champagne and other sparkling wines may be in name only.¹²³ The strength of Champagne comes from its global recognition of quality; this is the primary reason use of the name “Champagne” is so strictly regulated.¹²⁴

In the United States, wines may be sold under designations “as to kind and origin as adequately describes the true composition of [the wine] and as adequately distinguish[es] them from standard wines.”¹²⁵ “Champagne” is a name of geographic significance, a designation of a type of wine, and a semi-generic designation.¹²⁶ When a semi-generic designation is used to designate wine of an origin other than that indicated by its name, there must be a direct conjunction between the designation and an appropriate appellation of origin, disclosing the wine’s true place of origin.¹²⁷ This means that if a sparkling wine were produced in New York, it would not be

114. Lisa Barriger, *Global Warming and Viticulture: The Ability of Wine Regions to Adapt in Differing Regulatory Schemes*, 19 PENN ST. ENVTL. L. REV. 311, 316 (2011).

115. Justin Hughes, *Champagne, Feta, and Bourbon: The Spirited Debate About Geographical Indications*, 58 HASTINGS L.J. 299, 301 (2006).

116. Steve Charters & Jean-Guillaume Ditter, *Location-Specific Advantages in the Wine Industry – From Terroirs to Territories*, WINE BUS. INST. 94, 95 (2017).

117. Hughes, *supra* note 116, at 301.

118. *Id.*

119. Maher, *supra* note 44, at 1885.

120. *Id.* at 1885–86.

121. Madeline Puckette, *How to Choose Champagne*, WINE FOLLY (Nov. 23, 2016), <http://winefolly.com/review/how-to-choose-champagne/>.

122. Morgan Korn, *Champagne vs. sparkling wine: Everything you need to know*, ABC NEWS (Dec. 23, 2017), <http://abcnews.go.com/US/champagne-sparkling-wine/story?id=51882636>.

123. *Id.*

124. Chouinard, *supra* note 17.

125. 26 U.S.C. § 5388(b) (2012).

126. 27 C.F.R. § 4.24(b) (2018); 26 U.S.C. § 5388(c)(2) (2012).

127. 27 C.F.R. § 4.24(b)(1) (2018); 26 U.S.C. § 5388(c)(1) (2012).

able to call itself simply “Champagne,” but instead would need to include some indication that it was actually made in New York or the United States more generally. This is to prevent consumer confusion, telling buyers that the American “champagne” they see on the shelves is not the “Champagne” of France and assuring winemakers in Champagne that use of their name has some protection.¹²⁸

Similar protection exists for the wine-producing areas in the United States. Though American wine consumers typically rely more on varietal terms than appellations of origin when purchasing wine,¹²⁹ as certain regions gain renown, consumers will likely begin to seek out wines of those particular origins.¹³⁰ AVAs highlight the link between geographical source and quality wine. Thus, strictly regulated use of AVAs “protect[s] local producers from outsiders and free riders, whose objective is to take an unjustified advantage of a *terroir*’s reputation.”¹³¹

The loophole as it exists currently allows a COLA-exempt wine composed of grapes grown in the Willamette Valley AVA in Oregon but bottled in New York to be called “Big Apple Winery” without reference to its true appellation of origin, thereby misrepresenting to consumers that the wine was “made in New York from New York grapes.”¹³² Likewise, a Wisconsin winery producing a COLA-exempt wine can identify it “as coming from the Calistoga AVA [in California] even though it was produced and bottled in Wisconsin.”¹³³ Doing so dilutes the value and reputation of the well-regarded Calistoga region and undermines the AVA system generally because businesses may try to take the name of a developed AVA and apply it elsewhere.¹³⁴

The COLA exemption allows wineries to “take advantage of the . . . loophole to label their wines in a manner that is inherently misleading as to the origins of the wines.”¹³⁵ Amendment supporters argue that this fundamentally undercuts the purpose of the AVA requirements—producers choose to meet the high standards needed to use AVA terms on their labels because doing so adds value to their wine.¹³⁶ Ensuring that only producers who source and finish their wines within an AVA or appellation protects the area from those who seek the advantages from the name without necessarily adhering to its quality standards for production. If the amendment were to pass, supporters look forward to winemakers who

128. Chouinard, *supra* note 17.

129. Tim Atkin, *Why France is whining about wine*, THE GUARDIAN (Jan. 30, 2005, 6:49 AM), <https://www.theguardian.com/world/2005/jan/30/france.timatkin>.

130. Maher, *supra* note 44, at 1908.

131. Charters & Ditter, *supra* note 117, at 95.

132. Siegel & Hinman, *supra* note 101, at 5.

133. Letter from Reiff & Koch to Greenberg, *supra* note 30, at 2.

134. Lewis, *supra* note 113.

135. Letter from Reiff & Koch to Greenberg, *supra* note 30, at 2.

136. Leary, *supra* note 114.

source grapes from out-of-state growers no longer being able “to reap any of the identification benefits of using grapes from . . . well-known appellations.”¹³⁷

Supporters also say that federal labeling rules assure consumers that when a wine is labeled with an AVA name, the wine’s grape source and place of production are closely tied to that named place.¹³⁸ Using an AVA name requires that at least 85 percent of the wine’s grapes are from the AVA and that the wine was fully finished where the AVA is.¹³⁹ Grape source is an important factor that goes into a wine purchase decision.¹⁴⁰ When a location is named on a wine label, “it is natural for the consumer to assume that the product originated” there, meaning not only that the grapes were grown there but also that the wine was bottled in that place.¹⁴¹

For example, if a bottle reads “Columbia Valley Riesling, Produced and Bottled in Texoma,” some might think that the wine was made from grapes grown in the Columbia Valley AVA in Washington, while others might think it was from grapes grown in the Texoma AVA in Texas. In actuality, the grapes were grown in Columbia Valley and shipped to Texoma where the wine was finished. Of course, this wine would be allowed for sale only in Texas. Nothing is technically incorrect about this scenario. With a COLA exemption, the Texas producer does not have to meet the TTB standards of usage, neither the 85 percent minimum composition requirement nor the in-state finishing requirement, in order to name the Columbia Valley AVA on this label as long as the wine is not sold outside of Texas, where it was produced.¹⁴²

However, the invocation of a well-regarded AVA on a label of a wine finished elsewhere, perhaps in an AVA that is not as well-known, could potentially confuse the consumer. One problem is that consumers may be led to think that the grapes were actually grown in the latter rather than the former AVA. In the above example, a consumer could misunderstand “Produced and Bottled in Texoma” to mean that Columbia Valley grapes were grown in Texas, not knowing that wine production is what happens after the grapes are harvested, from fermentation onward.¹⁴³ Another problem is that consumers could start to believe that a wine produced in a

137. Siegel & Hinman, *supra* note 101, at 6.

138. Trinidad, *supra* note 9.

139. 27 C.F.R. § 4.25(e)(3) (2018).

140. Letter from Caleb R. Trotter, Attorney, Pacific Legal Fund, to Amy Greenberg, Dir. of Regulations & Rulings Div., Alcohol & Tobacco Tax & Trade Bureau 3 (Aug. 18, 2016), <https://www.regulations.gov/contentStreamer?documentId=TTB-2016-0005-0038&attachmentNumber=1&contentType=pdf> (citing *Bronco Wine Co. v. Jolly*, 29 Cal. Rptr. 3d 462, 475 (Cal. Ct. App. 2005)).

141. Maher, *supra* note 44, at 1907.

142. Proposed Revisions to Wine Labeling and Recordkeeping Requirements, *supra* note 10, at 40585.

143. *WSET Level 1 Award in Wines*, WSET GLOBAL, Aug. 2012, at 16.

less-acknowledged place could carry the same renown as one produced in a more prominent place, thereby diminishing the value of the more prominent AVA. If consumers believe Columbia Valley-quality wine can be produced in Texas, then they would no longer want to purchase actual Columbia Valley wine imported from Washington, which would likely be more expensive.

Evidence produced in *Bronco Wine Co. v. Jolly* showed that consumers believed that wine marketed with the name “Napa Valley” was made from grapes actually grown in Napa Valley, California.¹⁴⁴ Bronco advertised its wine in this manner to exploit Napa Valley wines’ superior reputation and to imply that its non-Napa Valley wine was of the same quality.¹⁴⁵ The court concluded that it was not an infringement on Bronco’s right to free speech to prohibit misleading wine labels that would allow producers to benefit from making false claims.¹⁴⁶

Bringing all wine labels under federal regulation reduces complication, and these guarantees of origin provide consumers not only with more accurate information but also with assurances against fraud.¹⁴⁷ By ending the practice of allowing COLA-exempt wine labels to bear AVA terms, even the most casual consumer could be confident that the wine they purchase “meets specific characteristics and exhibits specific qualities.”¹⁴⁸

B. OPPONENTS

Opponents of the proposal criticize the evisceration of the in-state exemption as a protectionist move in order to benefit the elite minority of AVA producers.¹⁴⁹ A small number of states in this country have the proper environmental conditions necessary to farm high-quality grapes, and yet, there is at least one winery in all fifty states.¹⁵⁰ Wineries that have limited access to good fruit from their own vineyards frequently source from the major grape-growing areas to supply or supplement fruit in order to make wine.¹⁵¹

Opponents disagree with those supporters of the amendment who hold up the sanctity of AVAs as an essential component of *terroir* and who

144. *Bronco Wine Co. v. Jolly*, 29 Cal. Rptr. 3d 462, 476 (Cal. Ct. App. 2005).

145. Letter from Trotter to Greenberg, *supra* note 141, at 3 (citing *Bronco Wine*, 29 Cal. Rptr. 3d at 475–76).

146. *Bronco Wine*, 29 Cal. Rptr. 3d at 480–81. *See also* Letter from Trotter to Greenberg, *supra* note 141, at 3 (summarizing the court’s holding).

147. Maher, *supra* note 44, at 1886.

148. Leary, *supra* note 114.

149. Tony Stephen, Comment 60 on Notice No. 160: Proposed Revisions to Wine Labeling and Recordkeeping Requirements (Aug. 23, 2016), <https://www.regulations.gov/document?D=TTB-2016-0005-0062>.

150. Casey Stringer, Comment 42 on Notice No. 160: Proposed Revisions to Wine Labeling and Recordkeeping Requirements (Aug. 22, 2016), <https://www.regulations.gov/document?D=TTB-2016-0005-0044>.

151. Siegel & Hinman, *supra* note 101, at 4.

believe that only if the wine is finished in the place where its grapes were grown is the wine worthy of naming its appellation of origin.¹⁵² Nowadays, especially in New World countries like the United States, supply and production may be located some distance away from each other.¹⁵³ Where the grapes were grown affects their varietal type, vintage year, and appellation of origin, but where the juice was fermented and the wine was finished do not change those traits.¹⁵⁴ Many believe in the old adage that “great wine is made in the vineyard, not the winery.”¹⁵⁵ The grapes’ growing location is the significant determinant of the wine’s ultimate taste and quality.¹⁵⁶ On the other hand, the location of production or bottling has no impact on the composition or taste of the resulting wine.¹⁵⁷

Out-of-state producers rely on the COLA exemption, which allows them “to indicate the source of their grapes and to provide consumers with accurate information about what is actually in their wine.”¹⁵⁸ The proposal would prevent those wineries from continuing to give their consumers complete information.¹⁵⁹ Instead, under the amendment, these producers would not be able to indicate varietal term or vintage year except with the broad national appellation of United States or American wine.¹⁶⁰

Further, for many grape growers in AVAs, shipping their product across state lines is a substantial part of their business.¹⁶¹ Smaller growers in the Sonoma Coast, Lodi, and Suisun Valley AVAs in California do not produce wine on their properties; instead, they sell their harvests to out-of-state winemakers.¹⁶² Resources are invested in building up their AVA’s brand name and the reputation of the grapes so that growers can charge

152. Hughes, *supra* note 116, at 301.

153. Charters & Ditter, *supra* note 117, at 95.

154. Robert Kowal, Comment 25 on Notice No. 160: Proposed Revisions to Wine Labeling and Recordkeeping Requirements (Aug. 22, 2016), <https://www.regulations.gov/document?D=TTB-2016-0005-0027>.

155. Steven Kolpan, *What Makes Wine Great?*, SALON (June 2, 2010, 2:01 PM), https://www.salon.com/2010/06/02/how_soil_affects_wine_ext2010/.

156. Audrey Muhlenkamp, Comment 96 on Notice No. 160A: Proposed Revisions to Wine Labeling and Recordkeeping Requirements; Comment Period Reopening (Dec. 8, 2016), <https://www.regulations.gov/document?D=TTB-2016-0005-0099>.

157. Anamarie Marlow, Comment 14 on Notice No. 160: Proposed Revisions to Wine Labeling and Recordkeeping Requirements (Aug. 16, 2016), <https://www.regulations.gov/document?D=TTB-2016-0005-0016>.

158. Siegel & Hinman, *supra* note 101, at 7.

159. *Id.* at 1.

160. *Id.*

161. Jon Bjork, Comment 81 on Notice No. 160A: Proposed Revisions to Wine Labeling and Recordkeeping Requirements; Comment Period Reopening (Nov. 17, 2016), <https://www.regulations.gov/document?D=TTB-2016-0005-0084>.

162. Letter from Carlo A. Scissura, President & CEO, Brooklyn Chamber of Commerce, to Amy Greenberg, Dir. of Regulations & Rulings Div., Alcohol & Tobacco Tax & Trade Bureau 1 (Aug. 22, 2016), <https://www.regulations.gov/contentStreamer?documentId=TTB-2016-0005-0060&attachmentNumber=1&contentType=pdf>.

higher prices on their shipments.¹⁶³ At the moment, out-of-state producers are willing and able to pay those prices because they can pass the costs down to consumers who will pay for higher quality wines that are labeled with the AVA name of where the grapes were grown.¹⁶⁴ Without the COLA exemption, these producers would no longer be able to indicate the provenance of the grapes used in their wines. This would likely result in their being discouraged from sourcing fruit from the well-regarded grape-growing AVAs that the amendment seeks to protect, negatively impacting both growers and producers.¹⁶⁵

Modern American wine consumers rely greatly on varietal terms, more so than on appellations of origin or vineyard designations, to make informed wine purchasing decisions.¹⁶⁶ Producers would thus be limited in their marketing techniques, being unable to include basic information on their labels about the grape varietal types in their wine, where the grapes were grown, and when the grapes were harvested.¹⁶⁷ Out-of-state producers would essentially only be able to tell their consumers that the bottle contains a red or white table wine,¹⁶⁸ which can typically be observed on sight by even the most inexperienced of consumers.¹⁶⁹ It is reasonable to predict that not including even a bare-bones description would make the wine worth less and more difficult to sell.¹⁷⁰

The TTB's role is to regulate wine labeling so as to prevent consumer deception and to provide consumers with adequate information about the product.¹⁷¹ Market trends and the regulatory intent aim "for greater transparency and accuracy in ingredient sourcing."¹⁷² Unfortunately, the amendment would have the opposite effect: wine labels would take information away from consumers, leaving them to buy products without knowing what is in them and thus, possibly more vulnerable to deceit.¹⁷³

If out-of-state producers become unable to include AVA names on their wine labels, as the amendment proposes, then consumers would not be able to make informed purchasing decisions because these labels would lack any

163. Bjork, *supra* note 162.

164. Stringer, *supra* note 151.

165. Letter from Scissura to Greenberg, *supra* note 163, at 1.

166. Atkin, *supra* note 130.

167. Siegel & Hinman, *supra* note 101, at 7.

168. Table wine is a broad categorization within the grape wine class and refers to ordinary grape wine that is not sparkling or fortified and that has 14 percent or less alcohol by volume. 27 C.F.R. § 4.21(a)(2) (2018).

169. John Cowperthwaite, Comment 75 on Notice No. 160A: Proposed Revisions to Wine Labeling and Recordkeeping Requirements; Comment Period Reopening (Oct. 11, 2016), <https://www.regulations.gov/document?D=TTB-2016-0005-0078>.

170. Siegel & Hinman, *supra* note 101, at 5.

171. 27 U.S.C. § 205(e) (2012).

172. Letter from Scissura to Greenberg, *supra* note 163, at 1.

173. Jeffrey Maltzman, Comment 13 on Notice No. 160: Proposed Revisions to Wine Labeling and Recordkeeping Requirements (Aug. 16, 2016), <https://www.regulations.gov/document?D=TTB-2016-0005-0015>.

pertinent information about the wines' varietal type, vintage year, or appellation of origin.¹⁷⁴ Being unable to advertise the superior nature of their wines' grape sources, producers would likely no longer want or be able to pay high prices for quality varietal types.¹⁷⁵ Growers who depend on shipping their grapes out-of-state will be cut off from the market.¹⁷⁶ In the end, the incentive to buy good grapes at a premium disappears, and the industry as a whole would suffer under this amendment.¹⁷⁷

Opponents further believe that the amendment is antithetical to the values of the American wine industry, which has eschewed the restrictive labeling and blending requirements traditionally found in the Old World wine regions since its inception.¹⁷⁸ The COLA exemption allows American winemakers to experiment with blending and different styles of production, advancing the spirit of innovation.¹⁷⁹ A Cabernet Sauvignon and Merlot combination is one of the world's most popular red wine blends.¹⁸⁰ The exemption permits wines being sold exclusively intrastate to include the varietal type breakdown of blended wines.¹⁸¹ If the exemption were eliminated, the labels would no longer be able to designate that, and consumers would not know what types were blended in their wines.¹⁸² Varietal type is critical information for consumers, and a generic description, like red table wine, says nothing about the varietal type or blend of types that may be in the wine.¹⁸³ The COLA exemption allows winemakers the flexibility to experiment and craft new wines for their consumers.¹⁸⁴ Its elimination would bring an end to this sort of creativity and modernization.¹⁸⁵

174. Stringer, *supra* note 151.

175. Letter from Scissura to Greenberg, *supra* note 163, at 2.

176. *Id.*

177. Bjork, *supra* note 162.

178. Noel Powell, Comment 87 on Notice No. 160A: Proposed Revisions to Wine Labeling and Recordkeeping Requirements; Comment Period Reopening (Nov. 28, 2016), <https://www.regulations.gov/document?D=TTB-2016-0005-0090>; *see also* MENDELSON, FROM DEMON TO DARLING, *supra* note 45, at 138 (describing American winemakers' desire for an appellation system distinct from the foreign models).

179. Powell, *supra* note 179.

180. Madeline Puckette, *What Grapes Make the Best Wine Blends?*, WINE FOLLY (Oct. 10, 2016), <http://winefolly.com/tutorial/what-grapes-make-the-best-wine-blends/>.

181. Siegel & Hinman, *supra* note 101, at 5.

182. Letter from Patrick Prendergast, President & Majority Owner, Mesa Vineyards, L.P., to Amy Greenberg, Dir. of Regulations & Rulings Div., Alcohol & Tobacco Tax & Trade Bureau (Aug. 17, 2016), <https://www.regulations.gov/contentStreamer?documentId=TTB-2016-0005-0031&attachmentNumber=1&contentType=pdf>.

183. *Id.*

184. Letter from John S. Dyson, Owner & Chairman, Millbrook Vineyards & Winery, Inc., to Amy Greenberg, Dir. of Regulations & Rulings Div., Alcohol & Tobacco Tax & Trade Bureau 2 (Nov. 3, 2016), <https://www.regulations.gov/contentStreamer?documentId=TTB-2016-0005-0079&attachmentNumber=1&contentType=pdf>.

185. *See* Powell, *supra* note 179.

C. COMPROMISE

After an initial comment period, in September 2016, the TTB began looking for a compromise that would be less strict than its original proposal, seeking a solution that would allow “geographic reference to the source of the grapes used in the wine [to] be included on a wine label in a way that would not be misleading with regard to the source of the wine.”¹⁸⁶ This middle-ground approach brings all wine labels under federal standards, thereby preserving “the integrity of the appellation labeling system,” but would allow COLA-exempt wines “to identify [their] grape source,” which would provide consumers “truthful[] and non-misleading information.”¹⁸⁷

Designations of wine origin are distinct from identifications of grape sources.¹⁸⁸ Appellations of origin and AVAs indicate the former—a wine’s place of origin represents its *terroir* and refers to the area where its grapes were grown and to the place where it was fully finished.¹⁸⁹ On the other hand, identification of grape sources says only where a wine’s grapes were grown, which may differ from where the wine was finished. Wineries that source their grapes from AVAs should be able to identify their grape sources but with a label that would not lead consumers to think that the wine was produced or bottled in that AVA.¹⁹⁰ The grape source can be disclosed without the use of the appellations of origin or AVAs, which is what the compromise proposes.

Currently, for instance, a wine that indicates the Napa Valley AVA and that also says it was produced and bottled in Illinois is in violation of TTB regulations even if the wine’s grapes were actually grown in Napa Valley.¹⁹¹ However, many assert that it is where the grapes were grown, rather than where a wine was finished, that matters when considering the wine’s ultimate composition and when advertising to consumers.¹⁹² Any information that would be detailed on a wine label—appellation of origin, vintage year, or varietal type—is determined by the inherent properties of the grapes and where they were cultivated and is unrelated to where the wine was fermented and finished.¹⁹³

186. Proposed Revisions to Wine Labeling and Recordkeeping Requirements; Comment Period Reopening, 81 Fed. Reg. 62046, 62047 (proposed Sept. 8, 2016) (to be codified at 27 C.F.R. pts. 4, 24), <https://www.gpo.gov/fdsys/pkg/FR-2016-09-08/pdf/2016-21522.pdf>.

187. Letter from Reiff & Koch to Greenberg, *supra* note 30, at 2.

188. *Id.* at 2–3.

189. *See id.* at 2.

190. *See id.* at 2–3.

191. Letter from Trotter to Greenberg, *supra* note 141, at 3 (citing Proposed Revisions to Wine Labeling and Recordkeeping Requirements, *supra* note 10, at 40586).

192. *Id.* (citing *Bronco Wine Co. v. Jolly*, 29 Cal. Rptr. 3d 462, 473–74, 480–81 (Cal. Ct. App. 2005)).

193. Kowal, *supra* note 155.

Under the compromise scheme, all wines that name an AVA would be subject to federal regulation, regardless of any COLA exemption.¹⁹⁴ In addition, a wine would have the option to include grape source information on its label “to identify the geographic area where the grapes used to make the wine were grown.”¹⁹⁵ In doing so, however, the grape source information cannot refer to any AVA names, which are only allowed to indicate a wine’s place of origin; any brand names of viticultural significance; or any other confusingly similar names.¹⁹⁶ A brand name has viticultural significance when it has the name of a state, county, or AVA as part of its name, or when the TTB finds it to have viticultural significance.¹⁹⁷ For instance, “Sonoma Vineyards” is a brand name of viticultural significance both because Sonoma Valley is an AVA and because Sonoma County is a county in California.¹⁹⁸ In contrast, “Windsor Vineyards” is not viticulturally significant because Windsor is not the name of a state, county, or AVA, and the TTB has not found the brand name to have viticultural significance.¹⁹⁹

An out-of-state wine would not be allowed to use the Napa Valley AVA, but it would be permitted to say that its grapes are from Napa County, California.²⁰⁰ This suggestion would promote consumer confidence and reduce confusion in understanding wine because the use of AVA names is still restricted to the requirements of 27 C.F.R. § 4.25(e)(3).²⁰¹ In order to include information about vintage year or varietal type, the label must include an appellation of origin.²⁰² Here, then, out-of-state wines that do specify such information would have to include the United States or American national appellation of origin since they would not be able to use any of the narrower state or county appellations or an AVA.

Another suggestion illustrative of this compromise is that a label would be permitted to say that the wine contains Carmel Valley grapes from Monterey County, California, and that it was bottled and finished in Colorado. “Merely adding the word ‘grapes’” on the label makes it clear both that the grapes are from an AVA and that the wine was made somewhere else.²⁰³ Producers would be able to honestly advertise as well as enjoy the benefits associated with using Carmel Valley AVA grapes, and

194. Letter from Reiff & Koch to Greenberg, *supra* note 30, at 2.

195. *Id.* at 3.

196. *Id.*

197. 27 C.F.R. § 4.39(i)(3) (2018).

198. Lee, *supra* note 11, at 91.

199. *Id.*

200. Letter from Reiff & Koch to Greenberg, *supra* note 30, at 3.

201. *Id.*

202. 27 C.F.R. §§ 4.23, 4.27 (2018).

203. Letter from Dyson to Greenberg, *supra* note 185, at 1 (noting that a consumer would understand that a wine with a label stating “Napa Valley grapes” contains grapes from Napa Valley, even if the wine was produced elsewhere).

consumers would have enough information to know where the grapes came from but also that the wine was finished elsewhere.²⁰⁴ This solution would accomplish two purposes of geographical indications: to communicate both geographic source and non-geographic qualities.²⁰⁵

The first is straightforward: “made from Carmel Valley grapes” indicates that the wine’s grapes came from the Carmel Valley AVA. The second is less literal: “Carmel Valley grapes” communicates the wine’s characteristics that are related to its geographic origin. This is to say that the *terroir* of the land where the grapes were grown imbued the grapes with certain inimitable qualities.²⁰⁶ The grapes of Carmel Valley carry prestige, regardless of where the wine is produced and bottled. This essence is what producers want consumers to know when they see the AVA name on a label.

CONCLUSION

The TTB proposal seeks to amend the CFR to require all wines, regardless of COLA exemption, to meet federal standards for minimum composition percentage and for finishing requirements in order to use appellations of origin and AVA names on their wine labels.²⁰⁷ Supporters applaud the amendment for preserving the well-earned and widely recognized reputation of certain AVAs from freeloading, COLA-exempt producers and for taking steps to promote consumer confidence when purchasing wines that name an AVA on their labels. Opponents allege that the regulations would have the opposite effect and actually reduce consumer information by preventing producers who use out-of-state grapes from accurately naming their AVA sources on their labels.

A middle-ground compromise that is less strict than the proposal still requires all wines to comply with federal standards but would allow labels to identify the sources of the grapes in the bottle without using appellations of origin or AVA names. This solution is in the best interests of growers, producers, and consumers. It would uphold the prominence of the AVA system and the grape growers and winemakers in those well-renowned areas. Simultaneously, out-of-state producers would not be dissuaded from purchasing grapes from AVA sources because they would not be hindered from telling consumers about the contents of their wines. Finally, consumers would continue to receive truthful and accurate information about where the wine’s grapes were grown and where the wine was finished and bottled.

204. Letter from Trotter to Greenberg, *supra* note 141, at 4.

205. Hughes, *supra* note 116, at 303.

206. *Id.* at 304.

207. Proposed Revisions to Wine Labeling and Recordkeeping Requirements, *supra* note 10, at 40586.

* J.D. Candidate, Brooklyn Law School, 2019; B.A., New York University, 2014. Thank you to the editors and staff of the Brooklyn Journal of Corporate, Financial & Commercial Law for their work in preparing this Note for publication. I dedicate this Note to my parents. Thank you for your love and support. Cheers!