Pursuing the Holy Grail of American Viticultural Areas

By Sara Schorske

HOW IS our system of American Viticultural Areas working? If you asked any gathering of industry members for their opinions, you'd probably hear a varied chorus of complaints: "There are too many AVAs." "They are confusing to the consumer." "They're too big" (and the related complaint, "ATF lets anyone in who wants in"). "They're primarily tools of marketing and self-interest." The system is imperfect, to be sure. But it's the best we have. Perhaps we, the appellation users, need to understand it better, in order to maximize its benefits, and minimize its disappointments.

The first article of this two part series described the basic requirements for the establishment of AVAs, the way the approval process works, and some of the challenges of working within the system. This second article will explain the issues surrounding AVAs in more detail.

Issue One: Making the Data Puzzle Fit Together

Ideally, an AVA is a clearly defined area which is already known historically and/or currently by the proposed name, and which possesses viticultural features that distinguish it from the surrounding area. In theory, that recipe sounds perfectly appropriate. In practice, however, the different pieces of the puzzle don't always fit together snugly without a little trimming here and stretching there. When the physical and historical evidence don't perfectly agree as to the extent of a particular place, the regulatory formula becomes a recipe for controversy and dissatisfaction.

A classic example of this is the Chalk Hill AVA. Shaped a little like Pinnochio's profile, the appellation acquired its prominent "nose" when its western boundary was extended to incorporate a vineyard named Chalk Hill Vineyard. Even though the flat terrain of the vineyard is markedly different from the rest of the predominantly hilly appellation, the vineyard owners had irrefutable evidence that the site was known by the name "Chalk Hill": vineyard designated wines from this vineyard had been advertised and marketed nationally. As a result, historical name usage prevailed over geography in Chalk Hill.

The verdict swung the other way in the establishment of the San Francisco Bay AVA. Although in many contexts the San Francisco Bay Area is understood to include the North Bay counties, the SF Bay petitioners presented a variety of climate and other data supporting the exclusion of Marin, Napa, and Sonoma Counties from the proposed appellation. Ultimately, ATF agreed, and drew the northern boundary of the appellation at the Bay. In San Francisco Bay, geography prevailed over name usage.

Recommendation: ATF would be very reluctant to deny anyone the use of a name in which they had invested. Fortunately, the Chalk Hill scenario, in which a grower could be materially injured by the loss of a well-known name if excluded from an AVA, is rare. Normally, you are on solid ground if you choose your boundaries based on strong geographical evidence, and stretch or shrink the place name to fit. As long as there are physical features within your proposed area that bear the proposed name, ATF will normally be willing to apply it to the area as a whole.

Compliance Watch is written by Sara Schorske, founding member of CSA—Compliance Service of America, LLC (www.csa-compliance.com). CSA specializes in licensing and compliance for the wine and beer industries. To reach the author—E-mail: csa@csa-compliance.com; Tel.: (800) 400-1353.

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Likewise, if you identify a viticulturally distinct area that is smaller than the widest application of your chosen name, ATF will agree to restrict it to your area as long as your other evidence is solid. Mendocino AVA and Monterey AVA are two examples of this principle. Both appellations are smaller than the counties that bear the same name, but both included all of the acreage currently or historically planted to winegrapes in the respective counties at the time the petitions were written.

Issue Two: Living Under the Tyranny of Precedent

The evidence submitted to establish new viticultural areas is evaluated by ATF in light of any surrounding or adjacent AVAs. ATF prefers to stand by the conclusions of past rulemaking processes unless there is extremely strong evidence in favor of a change.

Existing AVA boundaries established years ago can be a real challenge to petitioners for new areas within or adjacent to the older appellations. Although current petitioners might believe they could draw a more rigorously accurate boundary in a particular location, they may be discouraged by the difficulty of changing the status quo—especially where their preferred border line would change a common boundary, or create a partial overlap, with an existing area.

The dilemma is greatest when the previously approved lines seem unsupported by currently available information. When the first AVAs were established, ATF did not require much hard data to be submitted in support of a petition. The early viticultural area petitions depended heavily on anecdotal reports. Also, ATF specialists were less demanding in their evaluation of evidence. Many statements in petitions were accepted without question by ATF if not questioned by industry commenters. In addition, boundaries were often drawn roughly, for example using roads instead of natural geographical features when other means of defining the area would have been more precise.

Solution: Pick your battles carefully. Going with precedent makes the processing of your petition much faster and easier. Fight the past only when it hurts someone (that is, a vineyard that deserves the appellation is excluded or divided) or when precedent contradicts your newer evidence enough to be troubling to the regulators.

Issue Three: Policies in Flux

Precedents are not set in stone, however. Over the years ATF has approved several petitions which amended previously approved areas. ATF has also revised some of its guiding policies in AVA establishment. Here are three examples:

Areas unsuitable for wine grapes: In the establishment of many AVAs, ATF made an attempt to exclude areas deemed unsuitable for grape growing, either because of overly rugged terrain, inhospitable climate, or urbanization.

This sensible policy backfired on ATF when the agency applied it overzealously in the establishment of Alexander Valley AVA. That appellation, like virtually all other "valley" appellations, had been defined by its petitioners to include the watershed area up to the ridge line surrounding the valley. (In fact, both of the competing proposals which vied for approval during the rulemaking process included the surrounding foothills.)

Nevertheless, ATF unilaterally rewrote the Final Rule to exclude the higher elevations of the foothills—without so much as hinting at the plan in any of its previous notices or during the hearing. Desk-bound specialists at ATF Headquarters believed that they were simply excluding areas too high or too steep for viable viticulture. The last minute change, reported in the Federal Register notice but apparently overlooked by the entire industry, went entirely unnoticed for many years before two excluded growers discovered the change and successfully petitioned ATF to restore the higher elevation foothills to the AVA.

In more recent years, ATF has shown itself to be much more liberal in including viticulturally unsuitable areas in AVAs. The recently approved San Francisco Bay AVA included two large areas that never have and never will grow a single grape. The petitioners included the waters of San Francisco Bay, considering them an appropriate part of an appellation by the same name. They also incorporated the entire city of San Francisco within the proposed boundaries, citing the city's important role in the wine industry's local history as the reason for its inclusion. The approved appellation enveloped both areas despite their obvious unsuitability for viticulture.

Non-contiguous areas: AVAs can be large and small. The largest, Ohio River Valley, is 26,000 square miles. The smallest, Cole Ranch, is less than a quarter of a square mile. But the most unusual AVA approved to date is Mendocino Ridge (which went into effect in December 1997). Mendocino Ridge has a fixed boundary defined on USGS maps, like all other AVAs, but the actual viticultural area lies within its borders in a polka-dot pattern—only areas 1200 feet in elevation and above, qualify to use the appellation. In approving the elevation based scheme, ATF deviated from the way over a hundred previously approved appellations had been thought of, and defined.

Partial overlaps: As mentioned in the first article of this series, ATF currently frowns on partially overlapping AVAs. A partial overlap is created when one viticultural area is partly, but not entirely, contained within another viticultural area. The policy reflects ATF's belief that partial overlaps are confusing to the consumer. Territory outside an AVA is, by definition, supposed to be distinct from the territory inside the AVA. Allowing an AVA to include areas both inside and outside a second AVA seems to contradict that principle.

Before the present policy was set—for nearly the first decade of American viticultural areas—ATF created many partial overlaps. Some of the overlaps were merely coincidental. For example, the Russian River Valley AVA was nearly entirely contained within the later-established, larger Northern Sonoma AVA, except for one small area south of Sebastopol, which extends outside the boundary of Northern Sonoma. Occasionally, a partial overlap was created intentionally. An example is Los Carneros, which is partly in Napa Valley and partly in Sonoma Valley.

In the late 80s or early 90s, ATF abruptly changed this practice, announcing that they would no longer create partial overlaps, except when there is very strong evidence in favor of doing so. The agency even stated at that time that it might proceed to correct all the existing partial overlaps. Although only a few of the pre-existing overlaps have in fact been corrected, ATF has scrupulously avoided creating new ones since the new policy went into effect.

Recommendation: ATF's handling of viticultural areas continues to evolve, so change is always possible. It doesn't hurt to suggest a new approach, if your proposed area seems to require it. You can always amend your petition if ATF rejects your suggestion. Quite a high percentage of AVA petitions have gone through one or more rewrites before winning approval.

Issue Four: Straddling the Line

What is the destiny of a vineyard which lies on both sides of an AVA boundary line? Does the grower have the option of claiming the appellation name for grapes from both sides?

ATF has considered this question, and the answer is "No." Only grapes from inside an AVA are entitled to bear the appellation. The same, by the way, is true when a vineyard is split between two counties.

Recommendation: Proponents of a new AVA may not even realize that their proposed line divides a vineyard. In many of these cases, the result is an unintentional mistake that can create needless complications for the grower and his customers unless corrected.

Sometimes, however, such a division is unavoidable or intentional. For example, a large vineyard on a ridge top may lie in two different watersheds. If a watershed boundary is used to define an AVA, it would be inappropriate to gerrymander the line just to accommodate one grower. I know of a grower on the western edge of Los Carneros who testified during rulemaking process for that AVA that part of his vineyard possessed the characteristic Carneros growing conditions, and the other part did not. His testimony, because it was so obviously not motivated by self-interest, was treated like gospel by ATF, and the Los Carneros line now bisects the vineyard.

Issue Five: AVA or Brand Name, But Not Both

Most people don't realize a danger hidden in the AVA procedure: the establishment of an AVA can actually rob a winery of full use of its brand name! How can this happen?

It goes back to Section 4.39(i) of ATF's wine regulations, which makes it illegal to use a brand name of viticultural significance unless the wine meets the appellation of origin requirements for the named geographical area. A brand name has viticultural significance if it includes the name of a viticultural area.

Under this regulation, a label that was legal the day before a new viticultural area is approved could become illegal the next day! For example, a brand name including the words "Redwood Valley," or "Lodi" or "Atlas Peak" could have been used on wine from any source before appellations of those names were approved. Today, however, those brand names can only be used on wines that are entitled to the named appellations.

The regulation makes only one exception to this rule, for brand names

used by a permittee on existing certificates of label approval issued prior to July 7, 1986. For those brands, the label must meet one of the following three conditions:

a) the wine must meet the appellation of origin requirements for the named geographical area; or

b) the wine must be labeled with an appellation of origin which is either (i) a county or viticultural area, if the geographic area named in the brand is smaller than a state, or (ii) a state, county or viticultural area, if the geographic area named in the brand is a state; or

c) the wine is labeled with a statement which dispels the impression that the brand name is indicative of the origin of the wine.

Recommendation: Keep Section 4.39(i) in mind when proposing a new AVA. Is the name currently used by any winery as a brand name? Or does a grower or winery have plans to do so in the future? If so, be aware of the implications before proceeding.

Issue Six: The Politics of AVA Approval

Opposition to a proposed AVA will not necessarily sink the project—many appellations have been approved in spite of significant dissension within the industry. Whenever opposition is based on a disagreement about facts, ATF will conduct an investigation and possibly hold a hearing to resolve the differences. However, when the contention is largely conceptual—such as the current controversy about the homogeneity of an appellation as large as the proposed California Coast AVA—ATF will often decide the argument based on regulatory guidelines. If the petitioners have met the legal criteria, their proposal is likely to win approval.

Still, politics are influential, and strong support from the industry is very helpful. Unanimous agreement about the value of an AVA is the biggest factor in shortening the approval time and minimizing regulatory scrutiny.

Interest on the part of a congressman can also be very helpful in keeping an AVA proposal on track, because inquiries from Congress supercede all other work at ATF! If a petitioner feels his project has been back-burnered too long, a letter from his elected representative is guaranteed to turn up the flame.

Recommendation: Politics can be hard to predict, and harder to control. Including all interested and affected parties in your process—by keeping them informed, and perhaps even soliciting their opinions—can often nip opposition in the bud, or at least counteract it. But how applicable this approach is in any given circumstance must be decided on a case by case basis.

Appellations Are Our Responsibility

The AVA process is certainly not immune to criticism, but the industry must recognize one simple fact: no viticultural area is self-explanatory. The ones that have gained market recognition and prestige have done so as the result of the coordinated and skillful efforts of wineries and growers who took the time and spent the money to educate wine drinkers. Remember, we can make up for a lot of the confusion and other claimed shortcomings of the process by how responsibly we as an industry exercise the privilege of establishing our own appellations.