

## **Grapes: Oh, the Paperwork! (Part 1)**

If you just got to make wine, and didn't have to tell anyone how much you made, how much you have and how much you sold, operating a winery would be a whole lot more fun! Starting with the basic principle that one level or another of your government, in its need to protect and preserve as much of your life as possible, basically gets to tax everything you earn, everything you own and everything you sell, the state and federal agencies charged with supporting, regulating and taxing the production and sale of wine get very involved with all aspects of a winery. And, in order to make sure that you don't lose track of how much involvement that is, they ask you to produce and/or file quite a bit of paper each year.

### **The Winemaking Records**

State and federal regulations govern much of what needs to be written down and kept. As a start, the Alcohol and Tobacco Trade and Taxation Bureau ("TTB"—the successor to the Bureau of Alcohol Tobacco and Firearms after the Homeland Security reorganization) enforces the following:

Sec. 24.315 Materials received and used record. (a) General. A proprietor who produces wine shall maintain a record showing the receipt and use or other disposition of basic winemaking materials received on wine premises. The record will show the date of receipt, the quantity received, the name and address from whom received, and the date of use or other disposition of the materials.

Interestingly, since there is no other mention in the regulations of what "basic winemaking materials" really means, this section is generally interpreted to relate only to grapes or other fruit for fermentation. Almost anything else you might use in winemaking is governed by its own regulation, with each of the following being required to be kept in a winery: sweetening record, bottling record, spirits record, acid record, chemical record, container fill test records, analysis records, amelioration (dilution with water) record and sugar record. We don't need to prepare the last two in California, because Section 17010(a) of the California Department of Health Services says:

(a) Sugar Use. No sugar, or material containing sugar, other than pure condensed grape must, and no water in excess of the minimum amount necessary to facilitate normal fermentation, may be used in the production or cellar treatment of any grape wine...

If you thought that was enough to keep track of, the federal regulations have a surprise for you:

Sec. 24.314 Label information record. A proprietor who removes bottled or packed wine with information stated on the label (e.g., varietal, vintage, appellation of origin, analytical data, date of harvest) shall have complete

records so that the information appearing on the label may be verified by an ATF audit. A wine is not entitled to have information stated on the label unless the information can be readily verified by a complete and accurate record trail from the beginning source material to removal of the wine for consumption or sale. All records necessary to verify wine label information are subject to the record retention requirements of Sec. 24.300(d). (Sec. 201, Pub. L. 85-859, 72 Stat. 1381, as amended (26 U.S.C. 5367))

This pretty much covers everything you do in the winery (unless you choose to sell unlabeled wine, which of course is a violation of a lot of other regulations).

## **Sour Grapes**

Even if you grow all your grapes, you will need to keep records for the California Department of Food & Agriculture, the CDFA, of the grapes you crushed, where they came from, and how much you paid for the grapes. Because wine and grapes are so important to the State's economy, an unusual amount of effort is devoted to keeping records of acreage, production and pricing for each year's crop. In January, every winery must file the politely-named but extremely complex and confusing "Grape Crush and Purchase Inquiry." Thankfully, beginning with the 2004 report, they have finally entered the 20<sup>th</sup> century (only one behind, now: woohoo!) and provided a downloadable Excel spreadsheet (<http://www.nass.usda.gov/ca/bul/crush/indexworkbook.htm>) in which the varieties, tons and prices are automatically totaled for you (and mistakes are much more easily corrected). After filing the spreadsheet via email, all you have to do is mail in the signed paper certification that you filed it electronically (oh, yes—you also have to send in a signed paper check for an assessment on your grape purchases to help the State fight Pierce's disease).

There's also another way the CDFA "helps" you—by requiring each winery buying grapes to file each year for a "Processor's License." This costs a variable amount per year, depending on how many grapes you intend to buy (careful here, there's a potential for a thoughtcrime!), but also requires another "contribution" of \$125.00 per year (this is your little part to help reimburse growers for other processors who default on payments), unless you register as a "cash buyer" of grapes. To qualify as a cash buyer, you must pay for the grapes, in full, at the time of delivery in coin or currency only—even cashier's checks won't satisfy this requirement. Depending on your part in the transaction, this could be the best or worst kind of paperwork!

## **Inventory and Taxes (two certain things)**

Like any business, a winery has to keep track of inventory, except that most of a winery's inventory is **\*\*Really Special\*\*** because it has potential value to the government. "Bonding" a winery means that you have provided assurances that the government will receive the taxes due on all the wine you produce. At some point (generally when the wine is sold or moved to "unbonded" storage such as a warehouse), you need to pay both the state and federal tax agencies the amount of excise taxes due them. Because there are

varying federal tax rates for different alcohol contents in wine, you need to track your inventory (bottled, and unbottled or “bulk” wine) by the following alcohol groups: 14.0% or less, 14.1 to 21.0% and 21.1 to 24.0%. For small wineries, the federal tax due for the three categories, per gallon, are: \$0.17, \$0.67 and \$2.25 (this makes producing wine with more than 21% alcohol kind of a one-item test of intelligence—you’d need a *really* good reason to make wine costing you that much more tax on each gallon). Also, if the alcohol should creep up to 24.1%, it’s legally no longer wine and instead qualifies under the regulation as “distilled spirits,” and that requires more paperwork.

The necessary inventory report (TTB Form 5120.17, “Report of Bonded Wine Premises Operations”), is filed once a year if you’re very small, or every month if your winery is larger, and allows you to keep a running total of the amount of wine you make, possess and dispose of. You need to make excise tax payments to the TTB for the amount of wine removed from bonded storage; again annually if you’re very small, or semi-monthly when you get bigger. Interestingly, in order for the government to get all of its (your) money before the end of the fiscal year on October 1, semi-monthly payers must make a *third* payment each September, covering the period 9/27 to 9/30—one time our tax payment for that period was under a dollar! The California Board of Equalization also requires annual, quarterly or monthly excise tax payments, but has the good sense to tax all (non-sparkling) wine at the fixed rate of \$0.20 per gallon, regardless of alcohol content.

Finally, the California Board of Equalization also needs to know how much sales tax you were kind enough to collect on its behalf by selling wine (and almost everything else except food) at retail. Once again, small entities can file the sales tax forms quarterly, but once your sales tax exceeds a certain limit, they want payments once a month (another good reason to stay very small).

### **It’s Getting Better(?)**

Beginning on August 2, 2004, the TTB initiated ([http://www.ttb.gov/publications/ind\\_circulars/ic2004\\_2.pdf](http://www.ttb.gov/publications/ind_circulars/ic2004_2.pdf)) an on-line filing process for both the Operations Report and for Excise Tax Forms. Judging from experience with a similar program established by the TTB for on-line approval of wine labels that took a very long time before it actually worked (more on label approvals next time), it may be a little while yet before this truly impacts us, but eventually it should reduce the amount of paper filed each year.

Halleluiah!, you begin to shout, *until* you read the fine print: “Nothing in this part alters any other regulatory or statutory requirement that records be maintained in paper format. If the regulations in this chapter require you to keep paper copies of certain forms, you must continue to do so unless TTB otherwise authorizes you to maintain electronic copies of these documents through a general notice in the Federal Register or through a variance.” Less paper for them, the same for you (at least you saved the postage)!