

How High is Your "Labeling Comply-Q?"



By Sara Schorske

IN MY last column, you tested your "compliance IQ." In this issue, in honor of its packaging theme, I've put together another short quiz—with answers! It focuses on commonly misunderstood questions affecting the labeling of wines.

What Changes Can Be Made to a Label without Requiring New Approval?

The back of the label approval form has a long list of items that can be changed without requiring a new label approval. The most common ones affecting wineries are:

- 1) Shape or proportionate size
 - 2) Changing or adding net contents.
- Because there are different type size requirements for the Government Warning Statement on containers of 237ml or less, containers over 237ml

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up to 3L, and containers over 3L, the BATF recommends obtaining separate approvals for each size category.

3) Trade name. Permissible as long as whatever trade name is used has been added to the bottler's permit.

4) Alcohol content. Again permissible, as long as the tax class of the wine is the same as the one on the approved label. For example, if one lot is 14% or under and the other lot is over 14%, you must get a separate label approval for each. If you are planning to bottle a wine that tests very close to 14% in the barrel, you would be well advised to obtain two label approvals—one showing an alcohol content of 14% or under, and the other showing a content over 14%. Because wine aging in barrels gradually increases its percentage of alcohol due to evaporation, wineries are frequently caught by surprise when a bottled wine tests above its labeled tax class.

5) Changing or deleting the vintage year. If you wish to add a vintage date to a wine label approved without one, you need a new approval.

6) Adding, deleting, or changing the name of the customer for whom the wine was bottled. Adding an additional label with this information is permis-

sible, provided the additional label makes no reference to the product or its characteristics.

7) Bottling date

8) Sugar content at harvest and residual sugar. Since there is no allowable tolerance in the statement of these quantities, you must adjust them on the label whenever they change from lot to lot.

9) Changing or deleting stated acid or pH content

10) Adding the BW number, which must be in direct conjunction with the bottler's name and address

11) Changing stated percentages of varietal or appellation content. Whenever you show percentages on a label, they must total 100%.

12) Adding or changing the UPC code

13) Adding, deleting, or changing a web site address, phone number, fax number, or zip code.

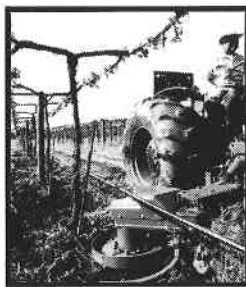
Any change not listed on the back of the label approval form will require a new approval. This includes, but is not limited to, changing the bottler statement (for example, from "produced and bottled by" to "vinted and bottled by"); the descriptive text on the label; or the varietal or appellation.

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How Accurately Does Alcohol Content Need to Be Stated?

For wines under 7% alcohol, the tolerance is $\pm 0.75\%$. For wines over 7% and up to 14% alcohol, the tolerance is $\pm 1.5\%$. For wines over 14%, the tolerance is $\pm 1\%$.

What Is the Significance of a Termination Date on a Label Approval?

When you receive a conditional approval for a wine (commonly known as a "use-up") the termination date refers to the last date on which wine can be bottled under that COLA (certificate of label approval). You may continue to sell the wine after that date for as long as it takes to deplete your inventory. You must surrender the COLA once it is expired, but you should keep a photocopy for your records in case of audit and for use in state label registrations.

If a Wine Will Be Given Away Rather than Sold, Does It Still Need Label Approval?

A certificate of label approval or a

certificate of exemption from label approval is required on any *wine removed from bond for consumption or sale*. If a wine does not comply with the requirements of Part IV (for example, it contains less than 95% of the stated vintage year), the winery can get exemption from label approval if the wine will be sold only in the state of origin. BATF requires that the label actually indicate that the wine is "for sale in [state] only." The process of obtaining exemption from label approval is virtually the same as obtaining label approval. The same form is used and it takes the same length of time.

Are There Any Restrictions on the Use of The Terms "Table Wine," "Dessert Wine," and "Cooking Wine?"

Each of these terms is not merely descriptive; they all have tax-class implications. "Table wine" can only be used on wines with alcohol content greater than 7% and no greater than 14%. "Dessert wine" is reserved for use on wines with alcohol content over 14%. "Cooking wine" may only be used

on wines that have been rendered unfit for beverage use because of the addition of salt or other food additives. Therefore, cooking wine may be removed from bond tax free.

If you have a wine that does not meet these legal definitions, you can still indicate on any label that the wine is a good accompaniment to desserts, or is suitable for use in cooking. You just can't use the specific terms "dessert wine" or "cooking wine" unless those terms fit the above definitions.

Does BATF Recognize the Use of the Term Meritage?

BATF permits the use of the term Meritage, but to date has not recognized the term as a legal class and type of wine. Therefore, when using Meritage on a label, you must also use another legal designation, i.e., "white wine" or "red wine." In addition, you should know that the term is trademarked by The Meritage Association. In order to use the trademark on your wine, you must pay a \$500 licensing fee to the association and abide by its standards for the use of the term.

If Your Label Is Approved, Does that Guarantee that It Is Legal?

As you know, every label must obtain federal approval from BATF's Product Compliance Branch in Washington, DC. Specialists there evaluate the text and other design elements for compliance with the label regulations of the FAA Act.

But you may not realize that all labels are subject to not just one, but two levels of review. Even if your label passes muster in Washington, DC, that doesn't give you *carte blanche* to use it. For example, you may have obtained federal approval on a label that says "estate bottled," but if you didn't comply with any one of the many production restrictions for estate bottling, the label is not legal even though it has been approved!

Specialists at the Product Compliance Branch have no way of knowing how you made the wine, or which wine you actually put in each bottle. The appropriateness of a label for the wine inside the bottle can only be determined by BATF inspection, a completely independent second level of label review. (Of course, not every label is reviewed by an inspector. Labels are randomly chosen for examination at product integrity au-

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dits conducted periodically at each winery.)

During a product integrity audit, the BATF inspector will determine whether a particular bottle of wine is entitled to the claims made on its label. This is done by examining harvest and winemaking records, formulas if any, and the label approval file. If a label is found not to match the wine in the bottle, the inspector may ask you to stop using the label, obtain a use-up, or even recall and relabel the product. In addition, the winery may be written up for a violation of product integrity regulations. Usually there is no fine on first time offenses, but the winery will be expected to respond in writing with a plan to avoid repeating the mistake.

What Are the Most Important Tips to Remember to Avoid Label Rejections?


Many labels are rejected because of technical mistakes, which are difficult to avoid. In addition to the many regulations covering wine labeling, there are many unwritten policies, some that change from time to time! But it is possible to avoid rejections due to mistakes on the application itself. For example, the label artwork is unclear or has handwritten changes, or the trade or bottler's registry number was excluded.

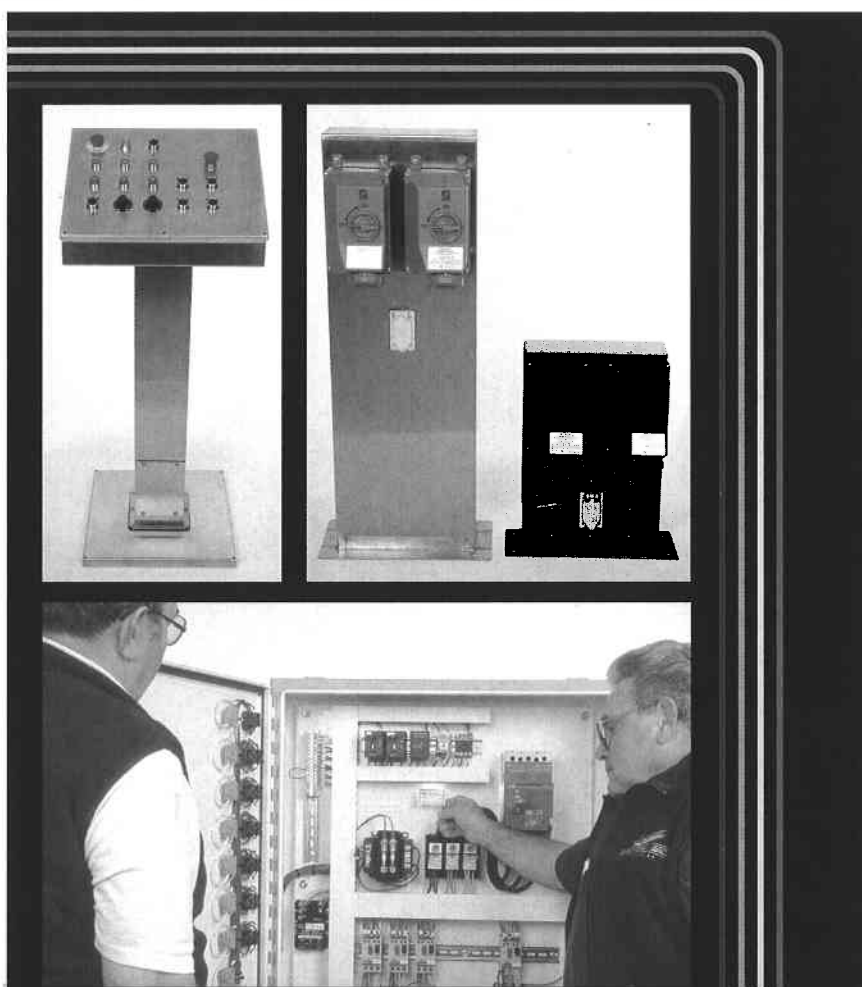
Be particularly careful regarding the following; mistakes are commonly made in these areas:

- Application submitted by responsible party (the bottler or importer is responsible for obtaining label approval no matter whether they own the wine or the brand name)
- Application signed by individual with signature authority
- Two original forms submitted, identical set of labels on both
- Labels are clear, legible, and suitable for microfilming
- All labels appearing on the bottle are included on the form
- Permittee name and address must exactly match what is shown on the permit
- Trade name in Item 7 on form matches trade name on label
- Trade name used on label has been approved on permit (enclose copy if name added within last 6 months)
- Permit number or registry number is stated in Item 6
- Address in Item 7 on form matches address on label (and permit)

- If more than one label, statements are not in conflict
- Size(s) of bottles covered by approval stated in Item 10
- If a formula wine, copy of approved formula enclosed
- English translations of foreign language statements enclosed
- If label is etched or painted on bottle, sample of a filled bottle enclosed
- Absolutely NO handwritten corrections on labels (or use of "white-out," cross-outs, type-overs, or labels applied over labels)

- If labels must be reduced to fit, state % reduction in Item 17 and submit full-size labels with the form
- Submit previous COLAs if only minor changes were made

Wine labeling is a very technical and complicated subject that goes far beyond the scope of any single article. Although the information given here is incomplete, learning and using the tips included will prevent the most common labeling problems. Then, with the time you save, you can study the rest of the story! 



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