

## Options for Growers in an Oversupply Market



By Sara Schorske  
and Alex Heckathorn

AT THE end of last year's crush it was widely reported that in California 75,000 tons of grapes had been left on the vine. Oregon and Washington had a similar oversupply. Industry analysts, pointing to the fact that vineyards planted in the last few years are now coming into full production, predict that this year once again, not all grapes will find a home by harvest time.

From the grower's perspective, it may seem that there is no option but to leave unsold fruit in the vineyard. But there is another choice. The grower can convert his grapes to wine—a far less perishable commodity—and then seek a buyer on the bulk market. Fortunately, you don't have to become a winery to have the option of selling your grapes as wine instead of fruit. Growers in California, Washington and Oregon can legally have their grapes custom crushed and sell the resulting wine to wineries, or even develop their own brand.

There are several good reasons to consider custom crushing your own grapes. Converting your crop into wine lengthens your window of oppor-

tunity to sell your product. If you don't convert your unsold grapes to wine, your opportunity to market them ends abruptly when autumn rains commence or when the grapes become overripe. Custom crushing also increases the number of your potential customers. For instance, there are many companies which never buy

grapes, but DO buy hundreds of thousands of gallons of bulk wine every year. And for growers who plan to develop a brand or build a winery in the future, there is another good reason: custom crushing is a perfect way to get your feet wet before jumping into the deep water.

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but since the sale of wine is highly regulated some licenses may be required. Your regulatory options will vary, depending on what state you're in. In all cases, the more you know and the longer in advance you begin planning, the more options you have. This article describes the different options available in California, Oregon, and Washington, and discusses the licenses you might need to expand the market for your grapes.

### Growers' Licenses

California growers can choose from several types of licenses, depending on your plans. The most common, and easiest, license for a grower is a Winegrape Grower's Storage License (a "Type 29" license). This license is relatively inexpensive at \$64 a year. Not surprisingly, the California ABC reports that last year it saw an upsurge in the number of Type 29 licensees.

This license allows the grower to store bulk wine made from his own grapes at a winery and to sell that wine in bulk to wineries, wine blenders, distilled spirits manufacturers, and vinegar producers within California. (If you have an opportunity to sell your

bulk wine to a wholesaler or retailer, who cannot legally purchase directly from you, you can probably make an intermediate sale to the crushing winery, who can legally sell to your customer.)

The grapes used to make the wine must be "produced" by the grower holding the license; the Type 29 license does not authorize sales of wine made from grapes not grown by the licensee.

In California, licensees are generally required to hold a separate license at every location where privileges are exercised. Typically, this includes the licensee's office as well as any site from which sales and shipments are made. This requirement posed special challenges to growers, who frequently do not know until the last minute how much tonnage they need crushed, or what wineries could accommodate their grapes. Fortunately, a kindly interpretation by the California ABC now allows growers to cover all their custom crush operations by obtaining a single Type 29 license at the grower's office premises. This means you do not need to know which winery will make your grapes into wine at the time you

apply for the license. In fact, the grower may use as many wineries as he chooses and even move his bulk wine from one bonded premise to another. This flexibility can be a boon in times when tank space is at a premium.

Washington has a similar license called the Grower's License. This license allows a grower to have wine made at a Washington winery from grapes or other agricultural products produced by the licensee, and allows the licensed grower to sell the wine in bulk to other wineries, distillers, or other manufacturers and for export. The wine cannot be bottled or sold to wholesalers, but again, if a wholesaler or retailer was interested, an intermediate sale to a winery is possible.

As in California, licensed growers may use as many wineries as they want to make their wine, but need only one license, which can be located at the grower's office. This makes it simple to obtain the needed license well in advance of crush. The WA LCB reports that only three grower's licenses are currently issued, but there are several pending applications for this license. At a cost of \$75 per year this license gives new meaning to the term "cheap insurance."



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The privileges of the Oregon grower's license will make growers in other states green with envy. An Oregon grower's license provides nearly all the privileges of a winery, except the right to produce wine. The Grower's Sales Privilege License permits wholesale sales of bulk or bottled wine to other licensees and to the Commission, retail sales of bottled wine and wine by the glass, tasting, and special events privileges. The license can be issued to any location where the grower has a place of business and a licensed grower can add up to two additional licensed locations to their license where they can exercise all the privileges.

All of the grapes or fruit used to make wine or cider must be grown in Oregon under the control of the licensee. Oregon's definition of "control" mirrors the one used in federal regulations for estate bottling. The definition is satisfied if the licensee has the right to perform or does actually perform all the acts common to viticulture under a lease or agreement of at least three years duration.

Licensed growers in Oregon may use wineries inside or outside of Oregon to crush their grapes, and they may import, store, transport or export their wines. All of these privileges cost only \$250 per year.

Clearly, grower's licenses are a great deal. Still, some restrictions do apply. Oregon will not issue a grower's license to someone who holds a winery license in another state. In addition, all three states classify the grower's license as a manufacturer's license, subject to the same tied house restrictions as other manufacturer's licenses. The most important restriction to be aware of prohibits a licensed grower from holding an interest in most retail licenses. Vineyard owners who are connected with a wine shop, restaurant, hotel, or other retail-licensed establishment may not be qualified to hold a grower's license.

### **Federal Basic Permit Required**

The Bureau of Alcohol, Tobacco and Firearms (soon to be Bureau of Tax and Trade) used not to require growers to obtain wholesale basic permits, since they were not purchasing wine for resale. However, it became clear to the Bureau that growers made the same kinds of efforts to market their bulk wine as other wholesale permittees, so

current policy requires custom crushing growers to obtain a basic permit from the Bureau. While this permit is relatively easy to obtain, it can take up to three months to issue, so planning ahead is crucial. You will also have to pay Special Occupational Tax, which is an annual tax collected by the Bureau. Wholesalers do not have to file excise tax returns or monthly reports of operations, as is required of wineries.

### **Brand Building Is Another Option**

It is a natural transition for many growers to become interested in developing their own brand or a winery. Sometimes the inspiration comes from seeing the success your winery customers have with wines from your fruit. Sometimes it starts with a business decision to have more economic control over your crop. Sometimes it is the fulfillment of a lifelong dream. If you are interested in this option you can have the winery bottle and label the wine for you, using your brand name.

California growers pursuing this option will need either a wholesale license ("Type 17") or an importer's general license ("Type 10"), depending on your marketing plans. With these licenses you can also buy other wine to blend with yours or bottle separately if that seems advisable. Unlike the Type 29 license, growers will need separate licenses at their office location and at any storage facility they ship from, if those places are different.

The California wholesale and importer licenses do not allow you to sell wine to consumers. If that privilege is important to you, you may be able to obtain a restricted retail license for mail order sales. However, the retail license requires that your location be properly zoned for retail activity, and the public notice mailed to nearby residents often causes significant problems.

Oregon and Washington also allow growers who wish to become brand builders to be licensed as wholesalers, but neither state allows a wholesaler to hold any type of retail license which would allow sales to consumers. In Oregon, the Grower's Sales Privilege license is clearly a better choice if you grow your own fruit, since it has both wholesale and retail privileges. In Washington, you'll need a wholesale license, but make sure to get it before you enter into a custom crush agree-

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ment with a winery. If you jump the gun, both you and the winery could be cited for creating an undisclosed financial interest in the wine and winery, which is prohibited.

In addition to the state wholesaler licenses, brand builders need a federal basic permit as a wholesaler from the Bureau.

What can you do if you didn't plan ahead and get a grower's license? If crush is upon you and you don't have the licenses you need to custom crush, in some states it may be possible to avoid the need for licensing if the crushing winery cooperates. In such a case, the winery agrees to buy the grower's grapes under the following special conditions:

1) the grower will not be paid until the wine is sold, and

2) the price will be dependent upon the value of the wine at the time of sale.

In this arrangement, the winery makes the wine, invoices the buyer, and collects the proceeds. The grower is paid for grapes, not for wine, based on how much was made in the sale.

If you rely on this kind of arrangement, you should enter into a written contract that specifies these terms. In

the absence of a contract, California law requires wineries to pay growers within 30 days for grapes delivered, and other states may have similar requirements.

Although tempting, this type of arrangement is not a good alternative for the other licenses described in this article, and should not be used to justify procrastination in applying for other licenses. It is not recommended for use by Washington growers at all. In Washington State, the LCB has taken the position that unlicensed individuals cannot contract with wineries to custom crush wine, and it may be difficult or impossible to get regulators to see the arrangement as other than custom crush.

Even in states where this kind of agreement is allowed, many wineries may not want to be that involved with the marketing and sale of your wine, or have that much of an ongoing liability to you. Also, this arrangement gives you no control or legal title to the wine, although you do have your grower's lien.

#### **Plan Ahead for Harvest**

Agriculture is a business with many


unavoidable risks. But losing a valuable winegrape crop doesn't have to be one of them. In many cases, custom crushing is an inexpensive and effective form of crop insurance.

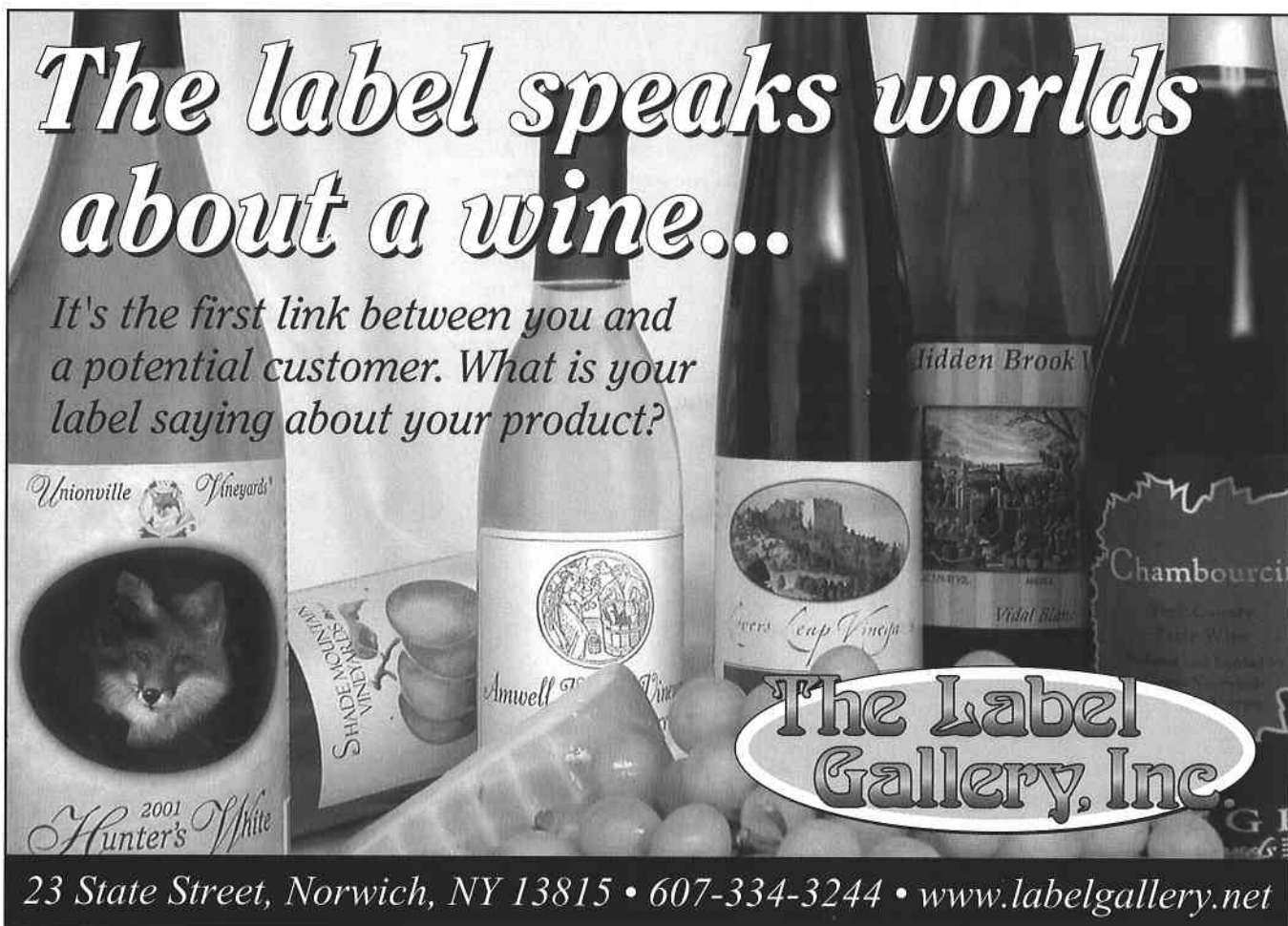
The important things to remember when considering custom crushing are:

1) Wine is a highly regulated commodity. You will either need a license to sell your wine (if one is available in your home state) or a very specific arrangement with a winery to avoid the need for licenses.

2) Licenses can take 60 days or more to obtain, so plan ahead.

3) The best arrangement for you depends upon what state you are in and upon your specific circumstances and plans.

You will most likely need help deciding what course of action is best for you, and oftentimes nearby wineries and local business advisors aren't familiar enough with the legalities to help you. You should seek advice from a compliance expert or from the regulators themselves. Call early, and put your plans in place well before harvest—your crop may depend on it. 



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