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Shiners A Primer on Unlabeled Wine

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There are many reasons, intentional or otherwise, for wine bottles to come off the bottling line as shiners—bottles without labels. Wine may be left unlabeled due to a delay in the production or approval of the winery's desired label. The winery may plan an extended period of bottle aging that would be hard on a fancy label. Or, frequently, the winery may plan to sell the wine to an undetermined winery or private label customer.

But no matter what reason dictated the labeling delay, shiners need extra compliance care and attention to avoid regulatory violations. The penalty for slipping can be unusually painful—a shiner containing Alexander Valley Cabernet could be demoted to non-vintage Red Table Wine before it reaches store shelves!

This undignified destiny can be avoided if wineries carefully observe the following regulatory requirements.

A Shiner Needs an Approved Label When Bottled

Every bottle of wine must be covered by a valid certificate of label approval (COLA) at the time of bottling. The approved label need not be applied to the wine during bottling. Moreover, the winery is free to later use a different label on that later. Nevertheless, regulations require that every bottle of wine must be covered by an approved COLA at the time of bottling, whose label could legally be used on the wine.

Every winery can always be assured of meeting this requirement if it obtains a few "generic" label approvals. We recommend having on hand an approved COLA for at least a red table wine and a white table wine. In addition, if your wines sometimes finish over 14 percent, get another pair of labels in that tax class using 15 percent alcohol (which covers over 14 percent wines up to 16 percent alcohol). These generic labels need only the minimum mandatory information; you don't have to specify a vintage or an appellation. Of course, if you produce sparkling wine or rosé, get generic labels for those wine types as well.

In the event an BATF inspector ever asks to see the label approval covering any bottle of wine, the winery can legitimately point to a generic label approval—even if the bottle is still unlabeled (or is already labeled with a different, but as yet unapproved, label).

Sure, the actual label applied to that shiner will eventually need to be approved, but the winery is not legally obliged to have that approval until the wine is removed from bond—as long as the bottling of the wine was covered by another, approved label.

Keep Those Shiners in Bond

Wine is required to be labeled with an approved label at the time of tax determination. If wine is removed from bond without a label, it is deemed to be mislabeled and could be subject to seizure.

BATF considers it a serious violation to remove unlabeled wine from bond. This is because BATF loses jurisdiction over the wine when it leaves in-bond status, and therefore BATF cannot fulfill its duty of insuring that the wine is truthfully and legally labeled.

Also note: Although federal label approval is not required on wine bottled for export, which is exempt from Part 4 of Federal Regulations (the wine labeling regulations), BATF also considers it a violation to export unlabeled wine. Each bottle exported must bear at least a small strip label indicating wine type, alcohol content, approved trade name and address of the bottler, brand name (if different from the winery name), and net contents.

Of course, mistakes happen. If you discover that you have taxpaid unlabeled wine, or have received unlabeled, taxpaid wine from another winery, steps should be taken to correct the situation.

First, if you received the unlabeled wine already taxpaid, call the shipper to confirm the status of the wine. The transfer documents may simply contain a typographical error, which can be corrected with amended transfer documents.

However, if you confirm that you have actual taxpaid wine on your hands, your task is a little more complicated. There are several possible solutions: you can send the wine back to the consignor for them to correct the problem; you can return the wine to bond as unmerchantable; or you might be permitted to

To the Recipient of Unlabeled Wine:

A copy of the federal label approval under which this wine was bottled is attached. If any other label is desired, [insert your winery name] as the bottling winery must obtain the approval before the label is used. The label must reflect that this wine was bottled in [insert the bottling location] and the trade name must be on [insert your winery name]'s basic permit. Any label used for this wine must conform to the applicable percentages shown on the transfer documents included with this wine. If this wine is transferred to another wine cellar in bond before it is labeled, please provide a copy of this statement, the percentages pertaining to labeling claims, and the federal label approval with the shipping documents. Do NOT remove this wine from bond until it has been properly labeled.

label the wine in a tax-paid area if your facilities allow that.

Although Section 24.295 allows unmerchanted wine to be returned to bond as a routine matter with the simple filing of a claim form, taxpaid unlabeled wine is not considered routine! A letter application to your local BATF area office should be prepared, outlining the circumstances and your desired action. These situations are handled on a case-by-case basis and, rarely, an inspection could be required.

If you end up handling the wine as unmerchanted, don't forget to keep the records required by Section 24.312. These include

- kind, volume, and tax class of the wine;
- the identity of the winery that bottled the wine;
- the identity of the wine that removed it from bond, if known;
- the amount of tax previously paid or determined;
- the date you returned the wine to bond;
- the serial numbers or other identifying marks on the cases; and
- the final disposition of the wine.

Keep an Audit Trail to Support Your Label Claims

All wineries are aware of their obligation to maintain a complete audit trail, from grape to bottle, supporting all labeling claims—including vintage, varietal, appellation, vineyard source, producer, and any other pertinent information—on wine they bottle. But that obligation doesn't end at the end of the bottling line. Did you know that, according to Section 24.314, the audit trail must remain unbroken all the way to the ultimate taxable removal of the wine? For this reason you should also make it your standard practice to ensure that all essential information travels with your wine if it leaves your premises unlabeled.

A good rule of thumb is, include the same level of detail (percentages, etc.) on your transfer documents for unlabeled wine, as you would for wine in bulk. Also, since the bottling winery remains responsible for the audit trail, even after the shiners leave its premises, it is in your best interests to instruct any recipients of unlabeled wine to pass the same level of information along if they transfer the wine again before it is labeled. This practice protects not just your winery, but also all the others who may handle that wine in the future. According to BATF's Industry Memorandum W-95-09: "The responsibility for transferring accurate label information is not that of the producer alone, but is the responsibility of all holders of the wine from the

time it is produced until it is removed from bond ..."

In addition, the bins, pallets, cases, or other containers of unlabeled wine should be marked to show the kind of wine, the alcohol content, and the registry number of the bottling winery, in accordance with Section 24.256.

Putting a Label on the Bottle

Even if another winery or BWC may finally affix labels to the shiners, the original bottling winery is forever responsible for obtaining label approval. No matter how far that wine travels, who holds title, or who puts on the label, the bottler remains responsible proper labeling.

When unlabeled wine is transferred in bond, a copy of the certificate of label approval under which the wine was bottled should be included with the transfer documents. (Here again, your generic label comes in handy.) Of course, the label shown on that approval will in many cases not be the label that is ultimately used. Before the wine is labeled differently, the bottling winery must obtain approval for the label actually used, including adding to its basic permit the trade name shown on the label.

Share the Wealth

As you have seen, transferring unlabeled wine to another winery is like delegating part of your recordkeeping responsibility to people over whom you have no control. Protect yourself, and do them a favor, by sharing your compliance know-how about unlabeled wine. An easy and very effective way to do that is to send the following statement, or something similar, along with any shipment of unlabeled wine that leaves your winery:

Keep this article handy as a reference for the next time your winery bottles shiners. That way, you'll be assured of keeping your compliance track record shining! **wbm**

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COLA's on the Web

Each year over 80,000 wines labels are submitted to BATF for approval. If you ever wondered why it took so long to get your applications for a Certificate of Label Approval (COLA's) approved, imagine what it must take just to handle over 300 applications a day!

To reduce their paper shuffling—and our turnaround times—ATF is developing a web based system for the filing and processing of label applications. Starting next year you will be able to file applications for Certificates of Label Approval, check on the status of your submissions, correct a defective filing, and obtain your approved COLA—all over the internet. Since the vast majority (80 percent) of COLA's processed each year are for wine labels, the wine industry has the most to gain from this new technology.

Testing of the new eApplication system is underway, and the system is planned to go on line in the spring of 2003. While using it will not be mandatory, the advantages of doing so will be significant, with the most obvious one being speed. As soon as you push the "submit" button on your browser, your COLA eApplication will be received by BATF.

Another advantage is that the system will review your eApplication before submitting it and will not let you send an incomplete application—the most common reason that applications are rejected. In addition, the eApplication system will provide 24-hour access to the status of your filings, and e-mail notification of the receipt and approval of the eApplications. Fortunately, if a problem is seen in the initial review, the system will give you the opportunity to "correct" your application, rather than rejecting it outright.

What Do You Need? Any computer with internet access and current browser program will work. No special software will be required, but you will need electronic image files of your labels to upload with the eApplication. Since most design work is now done on computers, these files are readily available from designers and printers.

Getting Ready Now: BATF is planning to start registering users for the eApplication system using a paper application this fall. (On line registration is not possible yet.) To register, a user will need to provide the winery's company name and the address as shown on the winery's Basic Permit. The person registering as a user will also need to have signing authority for the winery.

Here Are Our Compliance Tips: The advantages of the COLA eApplication system will be well worth the effort to learn how to use it. To get ready to use it successfully we suggest:

- Check, and if necessary update, your winery's information on its basic permit.
- Make sure all labeling trade names you are using have been formally added to your permit.
- Give the winery personnel who will use the system signing authority for COLA applications. If you want you can limit the authority to COLA applications only.
- After the electronic COLA system is operational, make it a policy to revoke signature authority when employment terminates, but not until after all COLA's filed by the departing worker are completely approved. (The status of pending COLA's will be accessible only on the "user's home page" of the person who submitted the application.)
- Once your staff is using the electronic COLA system, make sure to maintain a record of each user's password.

For more detailed information on the use of the COLA eApplication system, you can download BATF's Industry Circular, No. 2002-5 from BATF's web site at www.atf.treas.gov/pub/ind_circulars/ic2002_05.htm.