

WINE AND VINEYARD LAW:
FEDERAL AND NEW YORK STATE LICENSES, PERMITS
AND REGULATIONS

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December 15, 2015

I. OVERVIEW

A. Federal Law

Wine law is governed on both the state and federal level. On the federal level, the Federal Alcohol Administration Act (“FAAA”)¹ and the Internal Revenue Code (“IRC”)² are the two statutes that control wineries. In broad terms, the FAAA is responsible for the basic permit, labeling and advertising, and fair trade practices while the IRC is responsible for the qualification of premises, production, and the payment of taxes. In the context of wineries, these laws are administered by the Alcohol and Tobacco Tax and Trade Bureau (“TTB”).

The TTB was formed in 2003 pursuant to the Homeland Security Act (“HAS”) of 2002. It serves to collect taxes and protect the public. The TBB enforces the FAAA, which ensures that only qualified people are engaging in the alcohol beverage industry. It also is responsible for enforcing laws regulating alcohol production and distribution, wholesale businesses, tobacco manufacturing, importation, and operations, alcohol labeling and advertising and tobacco products advertising. The TBB is not responsible for retail sale of alcohol or tobacco and alcohol and tobacco substance abuse programs.

B. New York Law

In New York, the Alcoholic Beverage Control Act (“ABC”)³ governs licenses and regulations within New York State (“NYS”). It is also regulated by the New York State Liquor Authority. New York’s licensing bureaus⁴ receive, examine and investigate license and permit applications within their Zone to ensure they meet the eligibility requirements of the State Liquor Authority as provided for in the ABC Law and Rules.

The ABC Law defines various licenses and permits within two general categories – wholesale and retail. These two types of licenses will be discussed in greater detail in *infra* Part II(E). Wholesalers include those licensees manufacturing, storing and distributing alcoholic beverages for sale to licensed retailers. Retailers are those licensees who can purchase, stock and sell alcoholic beverages for consumption on or off-premises. The length of the license period varies depending on the class or type of license issued. The fee structure is established by the ABC

¹ See 27 U.S.C. § 121 *et seq.* and see FAAA regulations at 27 CFR §1.24-31 *et seq.*

² See 26 U.S.C. § 1 *et seq.* and see IRC regulations at 27 CFR §24.100-117 *et seq.*

³ See N.Y. ABC. Law.

⁴ There are three, located in: (1) New York City, (2) Albany, and (3) Buffalo.

Law. In New York, one would need a wholesaler's license and a retail license if that company wanted to distribute the wine and sell it to consumers.

II. WINE LICENSES AND PERMITS

Being in the wine business is considered a privilege by the government and this privilege can be revoked. For this reason, it is highly regulated at the both the state and federal level.

Anyone who intends to produce or blend wine must obtain a Federal Basic Permit from the TTB.⁵ There is no charge for this permit. In New York State, one must obtain a permit in accordance with Section 75 of New York's ABC law.⁶ This is called an Alcohol Permit and is valid for three years. The fee for application of this permit is \$38.00. Furthermore, the TTB must approve all application for wineries, breweries, etc. before business operations can begin. This is clearly stated in CFR §24.100. However, before one applies, a decision must be made as to which type of operation is being started (e.g., bonded winery, alternating proprietorship or custom crush) (discussed in the next section).

New York has a policy, Tied House Law, whereby licensed wine retailers cannot also be a manufacturer or wholesaler of alcohol and vice versa.⁷

A. Types of Wineries

1. "Stand Alone" Bonded Winery

This is a brick and mortar-type establishment. This type of operation is the typical commercial "winery" that produces and stores its own wine. It also is responsible for keeping its own records, reports, wine labeling and, of course, taxes. To be a bonded wine premise, one must first establish the premises, obtain a bond, and receive permission from the TTB. The bond is basically an insurance policy that will cover excise tax liability due to the federal government.

In this type of winery, the documents that must be filed with the TTB include:⁸

- 1) Application for Basic Permit;
- 2) Application to Establish and Operate a Wine Premises;
- 3) Wine Bond (generally in the amount of \$1,000 for smaller wineries);
- 4) Environmental/Water Quality information;
- 5) Signing Authority or Power of Attorney;
- 6) Personnel Questionnaires for Owners/Officers/Directors; and
- 7) Other supporting documentation.

⁵ See 27 U.S.C. §203(b)(1). This form is available at <http://www.ttb.gov/forms/f510024.pdf> (last visited September 16, 2015).

⁶ These can be obtained at <http://www.sla.ny.gov/online-permit-applications> (last visited September 14, 2015). One can also see the fee schedule here.

⁷ See ABC Law §106(16) and §106(13).

⁸ All applications and form are discussed in II.C *infra*.

2. Alternating Proprietor

In this situation, two or more wineries share use of part of a bonded winery's facility. The winery that is actually bonded is the "host." The alternating proprietor must on its own qualify as a winery, but the bonded part falls on the "host." Each winery is responsible for its own record keeping, labeling, reporting and taxes. This option is popular for newer wineries that have not committed to a lot of space yet, which also helps avoid some start-up costs.

For this type of winery, the documents that must be filed with the TTB include:

- 1) Application for Basic Permit;
- 2) Application to Establish and Operate a Wine Premises;
- 3) Wine Bond (minimum amount of \$1,000);
- 4) Diagram of premises depicting the alteration agreement;
- 5) Environmental/Water Quality information;
- 6) Signing Authority or Power of Attorney;
- 7) Personnel Questionnaires for Owners/Officers/Directors; and
- 8) Other supporting documentation.

3. Custom Crush

This establishment makes wine that is ordered by clients, who then resell it. In this situation, the "producer" is the one that must qualify as a fully bonded winery. This facility crushes, ferments and bottles. The "client" is essentially a wholesaler and the one that provides the grapes for crushing. Some new wineries like this option because the proprietor can still have a tasting room, but can focus on building the brand and marketing. The client takes the finished product and goes and sells it themselves.

In this type of winery, the documents that must be filed with the TTB include:

- 1) Application for Basic Permit;
- 2) Signing Authority or Power of Attorney;
- 3) Personnel Questionnaires for Owners/Officers/Directors; and
- 4) Other supporting documentation.

4. Bonded Wine Cellar

This is a place where wines are stored, blended, and bottled. There is no fermentation process taking place here. They are under bond, as with a bonded winery.

In this type of winery, the following documents must be filed with the TTB:

- 1) Application for Basic Permit;
- 2) Application to Establish and Operate a Wine Premises;
- 3) Wine Bond (minimum amount of \$1,000);
- 4) Environmental/Water Quality information;
- 5) Signing Authority or Power of Attorney;
- 6) Personnel Questionnaires for Owners/Officers/Directors; and
- 7) Other supporting documentation.

B. Required TTB Documentation

“There is no fee at the federal level to apply for or maintain approval to operate TTB-regulated alcohol and tobacco businesses.”⁹ All documents may be sent in the U.S. mail, and some can be filled out online.¹⁰

An “application” consists of all of the above documents required for any specific type of winery. Once an application is received, it may take up to seven business days for it to be entered into TTB’s tracking system. The application is then reviewed by a TTB Wine Applications Unit Specialist. The Specialist will telephone the applicant to discuss the application, and to request any further information that may be needed. In some cases, the application may be referred to a TTB Trade Investigations Division (“**TID**”) Field Office for on-site inspection.

After the application is approved, if one is planning to be a retailer, the business must file an application with TTB and receive approval before engaging in business. These packets include a combination of required forms, and instructions along with tools and resources to aid the applicant in filing an acceptable application. In addition, there are specific packets to be completed for alcohol producers/manufacturers and importers and wholesalers.¹¹

The TTB recommends using their online system, when available, for faster results. In any case, the TTB should usually respond to the applicant within about 7-10 business days.

1. Application to Establish and Operate Wine Premises

This is TTB Form 5120.25.¹² Every business that wishes to conduct the operations of a bonded winery, wine cellar, or a wine bottling house, must file this application. This form is sent *in duplicate* to the Director, National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau.¹³ There is no cost for this form and it should be submitted with the following documentations as a whole application to the TTB (referred to herein as the “**entire application**”).

An applicant should be prepared to provide the following information:

- A serial number (which means that if this is the first application, it should be numbered “1.”)
- The date
- The registry number (blank if this is the first application)
- Name and address

A statement stating the type of business organization and the persons having interest with:

⁹ See TTB’s application available at <http://www.ttb.gov/applications/> (last visited September 18, 2015).

¹⁰ See TTB’s permit available at <http://www.ttb.gov/ponl/permits-online.shtml> (last visited September 18, 2015).

¹¹ Available at http://www.ttb.gov/applications/wholesaler_packet.shtml (last visited September 16, 2015).

¹² Available at <http://www.ttb.gov/forms/f512025.pdf> (last visited September 11, 2015).

¹³ See also 27 CFR Part 24.

Type of Entity	Documents Requested
Corporations or limited liability companies	<ul style="list-style-type: none"> (a) Charter or certificate of existence, incorporation, or organization. (b) Names and addresses of officers, directors, members and managers. (c) Certified extracts of minutes authorizing certain individuals to sign. (d) Statement showing the number of shares/ownership of each class of stock/interest authorized and outstanding, and the voting rights of the respective owners or holders. (e) Statement of interest: Names and addresses of the 10 persons having the largest ownership or other interest and nature and amount of the stockholding or other interest of each, whether the interest appears in the name of the interested party or in the name of another party. The Director, National Revenue Center may request the names of interested persons if the applicant corporation or LLC is wholly owned or controlled by another corporation or LLC.
Partnerships	<ul style="list-style-type: none"> (a) True copies of articles or partnership agreement, if any, and of the certificate of partnership where required to be filed by local authority.¹⁴ (b) Description of the wine premises. (c) Whether, if the application is not for a bonded wine premises where production of wine will take place, the applicant agrees to having his or her name listed in a TTB publication to be distributed to the public. (d) Any trade names. (e) Any basic permits and bonds (include the present one). (f) If the applicant is a volatile fruit-flavored concentrate operation, he or she must follow additional instructions found at the end of the form. (g) If there are any other operations occurring on the wine premises, these must be disclosed.

¹⁴ See TTB Form 5120.25 available at <http://www.ttb.gov/forms/f512025.pdf> (last visited September 18, 2015).

2. Application for Basic Permit Under the FAAA

This is TTB Form 5100.24.¹⁵ One needs to complete this if one wants a permit under the FAAA to engage in the business of producing or processing wine, or importing or wholesaling alcohol. This form is sent *in duplicate* to the Alcohol and Tobacco Tax and Trade Bureau office in either Puerto Rico (if producing or processing operations will be in Puerto Rico) or the address in Ohio, if operating in the U.S. These addresses are specifically listed on the bottom of the form. There is no cost for this form and it should be submitted with the other documentation in this section as the entire application to the TTB.

An applicant should be prepared to provide the following information:

- The federal employer identification number (“FEIN”) of the business
- Any D/B/A name
- Labeling trade names (if applicable)
- Type of business to be conducted at the premises
- Ownership information for sole owners, all general parties, LLC members/managers, corporate officers and directors, and shareholders with more than 10% voting stock and the personal information following below
- Name, social security number, date of birth and place, citizenship status
- Alias
- Residences for the past 5 years
- Gender
- Whether the applicant or any other persons listed for the business on this form has ever been denied a permit, license, or other authorization to engage in business to manufacture, distribute, import, sell, or use alcohol products by any government agency or had such permit, license, etc. suspended or terminated
- Whether the applicant or any other persons listed for the business on this form has ever been arrested for, charged with, or convicted of any crime under federal, state or foreign laws other than traffic violations or non-felonious offenses
- Any label approvals should be provided as well (TTB form 5100.31). This form is discussed under wine importation permits, *infra*.

3. Personnel Questionnaire

This is TTB Form 5000.9.¹⁶ As stated above, operating in the alcohol industry is a privilege. Thus, the regulatory authorities want to know about the actual people, not the “business” that is operating the winery.¹⁷ There is no cost for this form and it should be submitted with the other documentation in this section as the entire application to the TTB.

An applicant should be prepared to provide, *inter alia*, the following information:

¹⁵ Available at <http://www.ttb.gov/forms/f510024.pdf> (last visited September 11, 2015).

¹⁶ Available at <http://www.ttb.gov/forms/f50009.pdf> (last visited September 11, 2015).

¹⁷ See 26 U.S.C. 5171(b), 5271(b), 5356, 5401(a), 5502(b), 5511(3) and 5712, and 27 U.S.C. 204(c).

- The business name and contact information
- Personal and contact information for all business owners, officers, directors, members, partners, etc.
- Questions regarding each individual's arrest, criminal and business background history
- Bank references' and personal references' contact information

4. Wine Bond

This is TTB Form 5120.36.¹⁸ This worksheet figures out the appropriate amount of the bond. This is required for every operation that produces or stores untaxed wine. One must file *duplicate original* bonds with the Director, National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau. There is no cost for this form and it should be submitted with the other documentation in this section as the entire application to the TTB.

An applicant should be prepared to provide the following information:

- Personal contact information for the obligor or all partners if it is a partnership
- Bond coverage and category.

5. Environmental Information

This is TTB Form 5000.29.¹⁹ This form seeks to find out how the applicant's winery will affect the environment in terms of waste and pollution. An *original and one copy* of this form should be sent to the Director, National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau.²⁰ There is no cost for this form and it should be submitted with the other documentation in this section as the entire application to the TTB.

An applicant should be prepared to provide the following information:

- Personal contact information
- Number of employees
- Location (specific address and description of premises and surrounding area)
- Type of heat and power to be used and its purpose
- Description of any air pollution control equipment proposed for use in connection with fuel burning equipment, boilers, or smokestacks
- Description of any solid waste and the amount
- Proposed methods of disposal of solid waste
- Description of any air pollution control equipment proposed for use in connection with any incinerators
- Description of any liquid waste and the amount
- Proposed methods of disposal of liquid waste

¹⁸ Available at <http://www.ttb.gov/forms/f512036.pdf> (last visited September 11, 2015).

¹⁹ Available at <http://www.ttb.gov/forms/f500029.pdf> (last visited September 11, 2015).

²⁰ See also 42 U.S.C. 4332.

- Description of any pollution control equipment that could monitor quality and/or control liquid waste
- Any expected noise.

6. Supplemental Information on Water Quality Considerations

This is TTB Form 5000.30.²¹ This form is to determine if a certification or waiver by the applicable State Water Quality Agency is required under Section 21 of the Federal Water Pollution Control Act. See 33 U.S.C. §1341(a). An *original and one copy* of this form should be sent to the Director, National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau. There is no cost for this form and it should be submitted with the other documentation in this section as the entire application to the TTB.

An applicant should be prepared to provide the following information:

- Application information from TTB Form 5000.29
- Description of any direct or indirect discharge into navigable waters which may result from the winery activities, and the location of where such discharge may enter navigable waters
- Dates on which the winery activities will begin and end and, if known, when the discharge date will be
- Description of the methods and means used to monitor the quality and characteristics of the discharge and the equipment or facilities employment in the treatment or control of waste.

7. Power of Attorney

This is TTB Form 5000.8 or Signing Authority for Corporate and LLC Officials 5100.1.²² Obviously, this form will depend on what type of entity the applicant's winery is, but shows the TTB the appointed attorney to represent the principal. This form must be filed in *duplicate* and sent to Director, National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau. There is no cost for this form and it should be submitted with the other documentation in this section as the entire application to the TTB. This form is self-explanatory.

8. Special Tax Registration

This is TTB Form 5630.5d.²³ This form is required before any business activities begin. The special (occupational) tax on producers and marketers of alcoholic beverages was repealed by Section 11125 of Public Law 109-59 as of July 1, 2008. This form gets sent to the Alcohol and Tobacco Tax and Trade Bureau at the address listed on the form. There is no cost for this form and it should be submitted with the other documentation in this section as the entire application to the TTB.

Applicants should be prepared to provide the following information:

²¹ Available at <http://www.ttb.gov/forms/f500030.pdf> (last visited September 11, 2015).

²² Available at <http://www.ttb.gov/forms/f50008.pdf> and <http://www.ttb.gov/forms/f51001.pdf> (last visited September 11, 2015).

²³ Available at <http://www.ttb.gov/forms/f56305d.pdf> (last visited September 11, 2015).

- Personal contact information
- Whether this is a new business, existing business, change in any business information such as name or ownership information, etc.
- Type of dealer (retail or wholesale) and the subclass (liquor, beer, wine, spirits, or a combination thereof)
- Business address
- Ownership personal contact information.

9. Documents Required in Certain Cases²⁴

a. Alternating Proprietor Agreement or Contract

If it exists, this is required where there will be alternating proprietor hosts or tenants. This will need to be submitted with the entire application packet.

b. Lease Agreement

This document is only required if a lease in fact exists. In that case, one would submit this with the entire application packet.

c. Organizational Documents

For a limited liability company, the TTB requires a copy of the Articles of Organization, copy of the Operating Agreement, list of members (their addresses and their percentage of interest), and a copy of the Certificate of Organization, where appropriate. For New York, this would be the Operating Agreement.

For a corporation, the TTB requires a copy of the Articles of Incorporation, a copy of the Bylaws, a list of officers, directors and anyone else holding more than 10% stock (their addresses and the number of shares held), and a copy of the Certificate of Incorporation, where appropriate. For New York, this includes a Certificate of Incorporation and Articles of Organization.

For general and limited partnerships (“LP”), the TTB requires a copy of the Partnership Agreement, a list of the partners, a copy of the Certificate of Partnership where applicable. If there is no written partnership agreement, then the partners will need to submit a written statement that states this and is signed by all of the partners.

C. Suggested TTB Documentation

1. Trade Name Registration

This is necessary to show the winery’s Trade Name. This is when a name other than the official corporate or business name is used on a label. This trade name must be consistent with

²⁴ Some documents are submitted with the application. When one submits an application for a permit, the TTB will contact the applicant to discuss the application and any additional information needed.

the trade name displayed on all of the TTB application documents. This trade name is requested in line item #5 on the Application for Basic Permit Under the Federal Alcohol Administration Act.

2. Diagram of the Bonded Wine Premises

This is a diagram of bonded wine premises from all alternating proprietor hosts and tenants. This is only needed if there is an alternating host relationship. The TTB does not require it, but suggests it, as it is helpful during TTB's processing of the application.

D. New York Licenses and Required Documentation

1. Licenses

Whether the applicant is an individual or partnership, each person must be over 21, a citizen of the United States; a permanent resident alien; or a citizen of a country with a treaty allowing persons to obtain a visa to enter the United States to engage in trade. Where the applicant is a limited liability company or a corporation, the managing member of the limited liability company or the officers and directors of the corporation must each be 21 years of age or older and be: a citizen of the United States; a permanent resident alien; or a citizen of a country with a treaty allowing persons to obtain a visa to enter the United States to engage in trade.

Someone *cannot* hold a license if he/she is: (a) a convicted felon, (b) a police officer, or (c) a person whose license to sell alcoholic beverages was revoked within the last two years.

Applications are sent in the U.S. mail to: New York State Liquor Authority, Church Street Station, P.O. Box 3817, New York, NY 10008-3817. These applications are then forwarded to an official office in Albany, New York for the State Liquor Authority and assigned to a licensing bureau. If there are any deficiencies, the applicants are given twenty days to comply with the deficiency letter. Once the examiner's review is complete, the application gets forwarded to the Licensing Board, who notifies the applicant of the determination.

Along with the application, the applicant must submit:

- 1) a fee (license fee plus filing fee).²⁵
- 2) all application forms
- 3) a bond
- 4) personal questionnaire
- 5) proof of citizenship for principals
- 6) fingerprints for principals
- 7) lease agreement or deed for property
- 8) diagrams and photographs of the premises
- 9) filing receipts for corporations, LLCs, LLPs, and/or assumed name certificate
- 10) copies of financial records showing the availability of funds used for the venture contract of sale and conveyance (if applicable).

²⁵ A schedule for retail fees can be found at <https://www.sla.ny.gov/system/files/Retail-Fee-Chart-081415.pdf>.

Other items which will need to be submitted are: (a) a certificate of authority to collect sales tax, (b) workers compensation/disability insurance-carrier name and policy number, (c) federal tax identification number (“FEIN”); and (d) the TTB permit.

A farm winery license is a special type of license and is codified in N.Y. ABC Law Section 76-a. A Farm Winery License is needed when a farmer wants to produce and sell wine on the site where the fruit used to make wine is grown. Farm Winery licensees can sell their wine to dealers, distributors, and individuals who visit the farm. The application may be found at <https://www.sla.ny.gov/system/files/Roadside-Farm-Market-Application-062215.pdf>.

This chart below identifies the various types of places where wine may be sold and what each type of retailer is permitted to sell at that type of premises.²⁶

License Class	Description
Wine Product	A "wine product" is defined as a beverage containing wine with added juice, flavoring, water, citric acid, sugar and carbon dioxide, not containing more than six percent alcohol by volume (typically referred to as "wine coolers").
Restaurant Wine	License for on-premises consumption of wine and beer in a place where food is prepared in such quantities that the sale of wine and beer is not the prime source of revenue.
Hotel Wine ²⁷	Allows on-premises sale of wine and beer in both a restaurant in the hotel as well as room service.
Club Wine	Does NOT mean "nightclub" or "private bar" designed to restrict admission to a specific group of persons, or class of people. See "Club Beer" for definition of "Club." Allows for on-premises sale of wine or beer for club members and guests. The club must appoint an ABC officer.
Tavern Wine	Allows sale for on-premises consumption of wine and beer.
Liquor Store	For the sale of liquor and wine (no beer) for consumption off the premises. The only additional items allowed to be sold, such as ice and corkscrews, are listed in the ABC Law. Only one license is allowed per person (corporation, partnership, etc.).
Wine Store	Not to be confused with the Retail Wine Outlet for a Farm

²⁶ This information can be found at the New York State, Liquor Authority, Division of Alcoholic Beverage Control [available at https://www.sla.ny.gov/definition-of-license-classes](https://www.sla.ny.gov/definition-of-license-classes) (last visited September 10, 2015).

²⁷ Under “Hotel Beer” definition, “hotel” is defined as “a building used for the regular feeding and lodging of guests. This may also apply to apartment situations whereupon the keeper of such hotel provides meals in a restaurant for occupants.

	Winery. License to sell WINE ONLY (not liquor or beer) for off-premises consumption, under the same basic conditions as a Liquor Store.
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2. Wine Tasting Licenses

Any person who is licensed to sell wine in New York State is permitted to conduct wine tastings on his or her own premises.²⁸ In addition, a winery can conduct tastings of New York labeled wine at licensed package and wine stores and establishments that have licenses to sell wine at retail for on-premises consumption.²⁹ The tastings must be under the supervision of an official agent of the farm winery, winery, wholesaler, or importer who must be present during the entire wine tasting. In lieu of providing wine tastings on their premises, wineries and wholesalers may apply for a permit to conduct wine tastings for various events. As with all things relating to winery licenses, this permit is a privilege and, thus, is revocable.

A farm winery can sell where other wineries can conduct tastings as discussed above, but can also conduct tastings at the State Fair, county fairs, and farmers markets.

3. Documentation

In New York there are retail applications and manufacturer/wholesaler applications.³⁰ Retailers are broken down into two categories – on premises and off premises. On premises is where the customer drinks wine at the retailer’s location such as sell “by the glass” scenario. Off premises is more like a store where wine is sold “by the bottle.” A retailer must also have a \$1,000 bond at all times.

III. EXCISE TAX

A. Overview

Excise taxes are taxes paid when purchases are made on a specific good, such as wine. Excise taxes are collected by the producer or retailer and not paid directly by the consumer. The excise tax on wine is administered under the TTB. As alcohol level increases, so does the tax amount. So, for example, the tax on wine would be more than the tax on beer. The tax on wine can be found in 26 U.S.C. §5041(b) and is summarized in the table below.

²⁸ See NY ABC Law §80; See also 9 NYCRR §63.11.

²⁹ See NY ABC Law §76(3)(a) and (3)(a-1).

³⁰ Instructions for the on-premise retail application is available at <https://www.sla.ny.gov/system/files/On-premises-instructions-072214.pdf> (last visited September 16, 2015). The application is available at <https://www.sla.ny.gov/system/files/On-Premises-Application-111313.pdf>. Instructions for the manufacturer/wholesaler application is available at <http://www.sla.ny.gov/system/files/Wholesale-Application-Instructions-061713.pdf>. The application is available at <https://www.sla.ny.gov/system/files/Wholesale-Application-061515.pdf>.

This table shows the amount of alcohol and the price of the tax per gallon.

<u>Amount of Alcohol</u>	<u>Excise Tax</u>
If ½ of 1% to less than 14% alcohol	\$1.07
If more than 14% but less than 21% alcohol	\$1.57
If more than 21% but less than 24% alcohol	\$3.15
Artificially carbonated	\$3.30
Sparkling	\$3.40

B. Credit for Small Domestic Producers

There is a credit for small domestic producers. This credit is up to \$.90 per gallon on part of the small domestic producer’s annual taxable removals, other than sparkling wine. The theory behind this is that the wine taxes for small wineries will be similar to what the rate was before 1991 (when the tax on wine was increased by \$.90 per gallon).

Here is an example of how this works:

Let’s take a winery that produces an annual 5,000 case production (half and half between the two tax classes. This means that 2,500 cases were wines that had alcohols in the 7 to 14% range and the other 2,500 cases had alcohols in the over 14 to 21% range. Each of these two alcohol ranges has its own tax class, and so tax rate per gallon (\$1.07 & \$1.57 respectively).

Here is what the calculation would look like for these amounts:

- 1) First to convert cases to gallons: $2,500 \times 2.37753 = 5,943.83$ gallons.
- 2) Next multiply the gallons by the two different tax amounts – At the lowered tax rate:
 $5,943.83 \times .17 = \$1,010.45$
 Plus
 $5,943.83 \times .67 = \$3,982.37$
- 3) Sum the two dollar figures together: $\$1,010.45 + \$3,982.37 = \$4,992.82$. This is the amount the winery would pay in federal excise taxes for that year’s bottlings.

What would the amount have looked like for these same gallons at the FULL tax rates? \$15,691.71! That’s an almost \$11,000 savings.³¹ In New York, this is similarly stated.³²

³¹ Example taken from Wine Compliance Alliance’s “Small Wineries, Are You Not Getting The Credit You Deserve?” available at <http://winecompliancealliance.com/wineries-are-you-not-getting-the-credit-you-deserve> (last visited September 21, 2015).

³² See 9 NYCRR §33.11 and NY ABC Law §99-b.

IV. LABELING OF WINE

A. Overview

Wine labels must be pre-approved by TTB if one intends to sell, ship or deliver for sale or shipment, or to otherwise introduce alcoholic beverages in interstate or foreign commerce. To comply with the TTB, the party responsible for bottling the wine must obtain a Certificate of Label Approval (“COLA”) from the TTB after the approval. However, if the label is made strictly for sample usage, it does not need a COLA. The turn-around time for currently processing a label application is 23 days for wines.³³

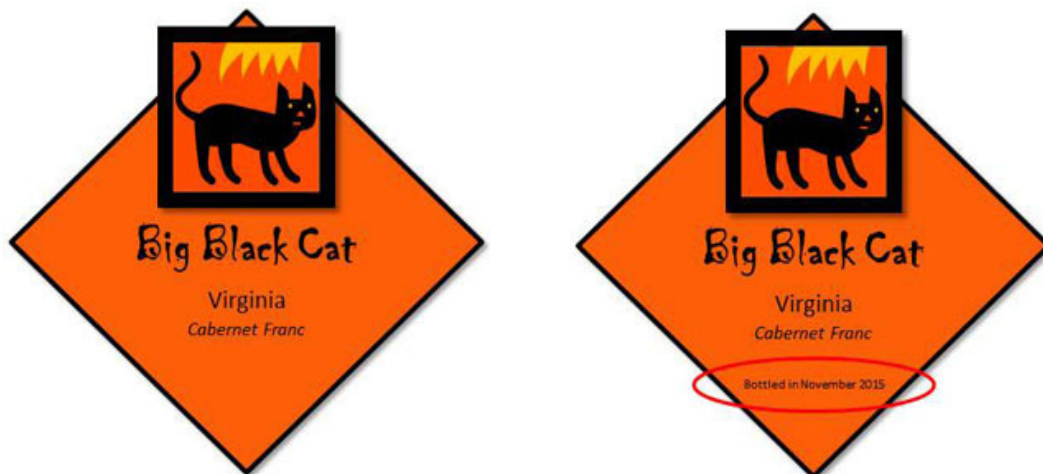
In New York, wine does not require state approval if the label has been approved by TTB.³⁴

B. Components of a Wine Label

A wine label provides lots of information to the consumer. The information included on a wine label is:

1. Vintage Date

This is the date when the grapes used to make the wine were harvested. If there is a vintage date, an origin smaller than a country must be included as well. If a state of country is used, then 85% of the grapes must be from that year. If a viticultural area is used, then 95% of the grapes must be from that year.³⁵



Bottling dates added to wine labels must comply with 27 CFR 4.39(c).

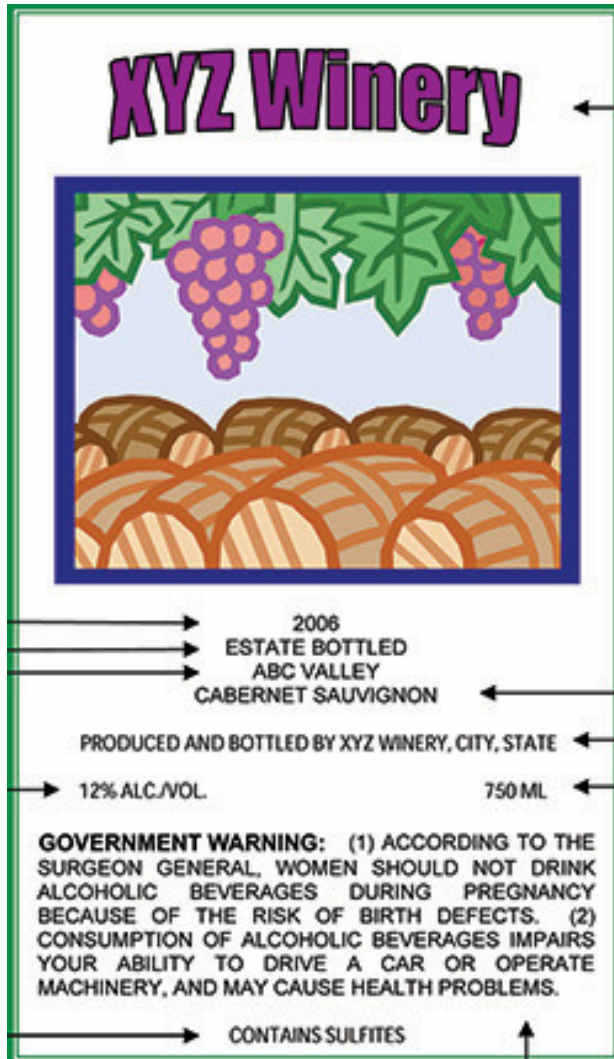
³³ See TTB’s website available at <http://www.ttb.gov/labeling/processing-times.shtml> (last visited September 21, 2015).

³⁴ See NY ABC Law §107- a(4)(c)(3).

³⁵ See TTB available at <http://www.ttb.gov/allowable-revisions/images/labels/Slide31.JPG> (last visited September 21, 2015); and 27 CFR 4.39(c).

2. Estate Bottled

This means that 100% of the grapes used in the wine came from land by that winery (“estate”). The winery must be located in a viticultural area. In addition, that winery must have crushed and fermented the grapes, finished, aged, and bottled the wine.



See
http://www.talkissheepmarketing.com/wp-content/uploads/2013/12/wine_label_requirements.jpg (last visited September 21, 2015).

3. Appellation of Origin



See Wine Label for Merryvale, 2003 Sauvignon Blanc.

When this is included on a label that means that 75% of the grapes used to make the wine were grown in whatever location is named. Appellation of Origin provides the geographic origin of where the grapes were grown. Appellations are defined either by state or country, or by federally-recognized growing regions called American Viticultural Areas (“AVAs”). This table shows AVAs within New York.³⁶

<u>AVA Name</u>	<u>County/Counties</u>	<u>Located Within</u>	<u>Contains</u>	<u>CFR Section</u> ³⁷
Cayuga Lake	Cayuga Seneca Thompkins	Finger Lakes		9.127
Finger Lakes	Schuyler		Cayuga Lake Seneca Lake	9.34
Hudson River Region	Columbia Dutchess Putnam			9.47
Long Island	Nassau Suffolk		North Fork of Long Island The Hamptons	9.170

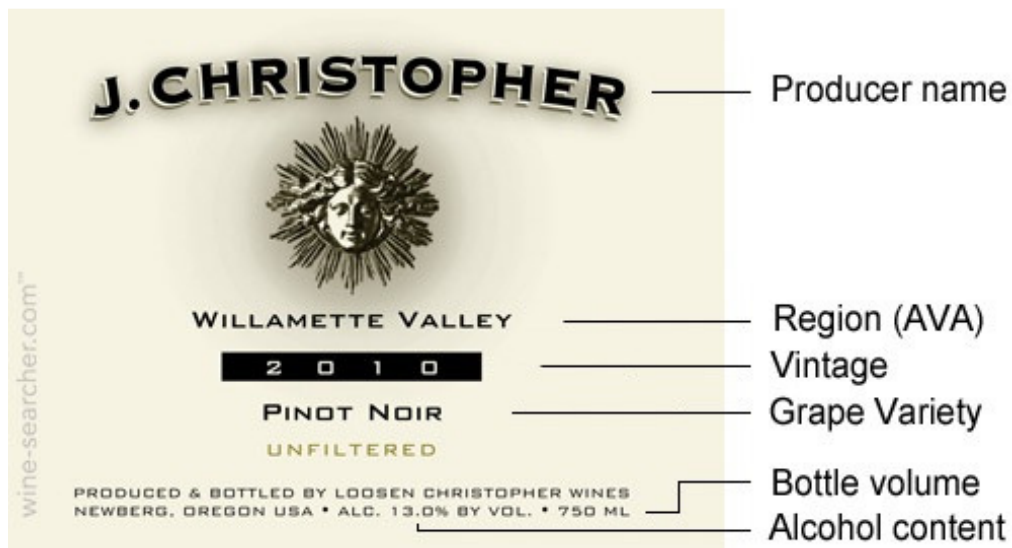
³⁶ See TTB’s website available at http://www.ttb.gov/appellation/us_by_ava.pdf (last visited September 9, 2015).

³⁷ These sections explain where the different AVAs fall on a map and what the boundaries of the regions are.

Niagara Escarpment	Niagara			9.186
North Fork of Long Island ³⁸	Suffolk	Long Island		9.113
Seneca Lake	Ontario Schuyler Seneca Yates	Finger Lakes		9.128
The Hamptons, Long Island	Suffolk	Long Island		9.101

4. Varietal Designations

These are the name(s) of the dominant grapes used to make the wine. This also requires an appellation of origin and means that 75% of the grapes used were of that same variety and were grown in the labeled appellation. Some wines do not include a varietal designation and may just say things like “red wine,” “rose wine,” “table wine.”



³⁸ There are 46 wineries in Long Island, New York. The North Fork has the most vineyards in Long Island. The North Fork refers to the fork on the northeastern part of the Long Island shore. This is recognized as an AVA because of its rural country lifestyle which makes the land “ripe” for grape growing, its proximity to the Long Island Sound, the Peconic Bay and the Atlantic Ocean which helps to increase the growing season of the grapes. The three most popular wines from the North Fork Region are: Merlot, Chardonnay and Cabernet Franc.

See Wine Label from J. Christopher, available at <http://sr2.wine-searcher.net/images/winelabelusa2.jpg> (last visited September 21, 2015).

5. Country of Origin

The U.S. currently has a mandatory Country of Origin Labeling (“COOL”). This is required by the U.S. Customs and Boarder Protection for containers of imported wine.



See Wine Label, available at <http://www.thewinecompany.net/wp-content/uploads/2012/03/DI-label.jpg> (last visited September 21, 2015).

6. Brand Name

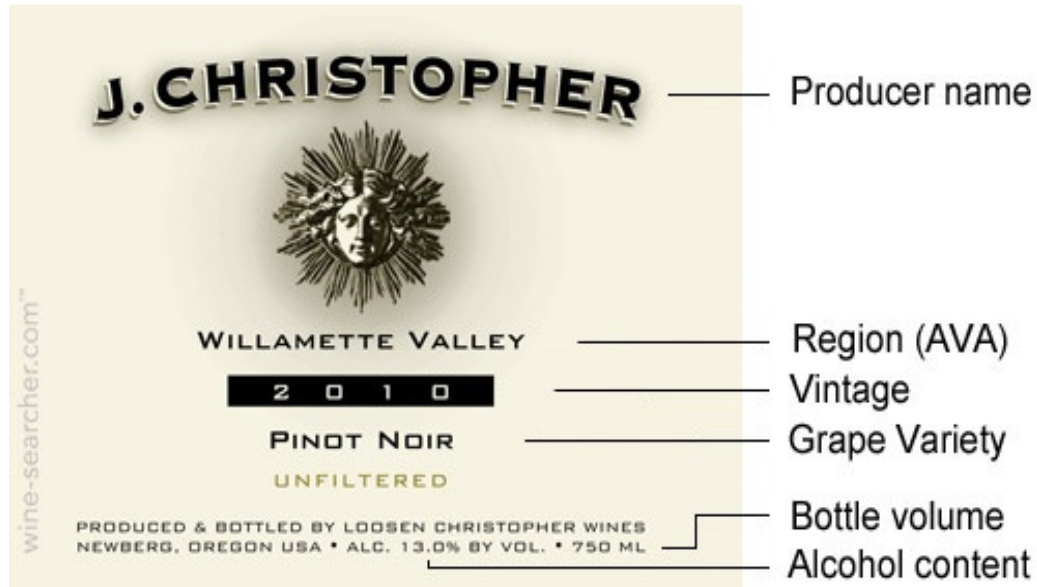
A brand name may not mislead the consumer about the age, identity, origin, or other character of the wine. It is for marketing purposes and identification purposes only.



See Wine Label for Mark West, available at <http://www.wineswonderland.com/wp-content/uploads/2012/10/US-wine-bottle-label-1.jpg> (last visited September 22, 2015).

7. Alcohol Content

Wines must include the percent by volume of alcohol. As another option, the wine can be labeled “table wine” or “red wine” if its content is from 7% to 14% and “dessert wine” if it is over 14%.



See Wine Label for J. Christopher Pinot Noir, available at, <http://sr2.wine-searcher.net/images/winelabelusa2.jpg> (last visited September 22, 2015).

8. Declaration of Sulfites

If there is 10 or more parts per million of sulfur dioxide, this must be indicated *if the wine is intended for interstate commerce*.



See Wine Label for California Vineyards & Winery's 2008 Chardonnay, available at <https://winingways.files.wordpress.com/2011/05/cawine-label.gif> (last visited September 22, 2015).

9. Name and Address of Bottler or Importer

This must appear on the bottle/container. This can be the operating name of the winery or a trade name.

4. Name/Address of Bottler

5. Net Content of Bottle

6. Sulfites Message

7. Health Warning

LAYER CAKE
One Hundred Percent Pure
SHIRAZ
VINTAGE 2006

My old grandfather made and enjoyed wine for 80 years. He told me the soil in which the vines lived were a layer cake. He said the wine, if properly made, was like a great layer cake, fruit, mocha and chocolate, hints of spice and rich, always rich. "Never pass up a layer cake", he would say. I have always loved those words.

A. Orlando

BAROSSA VALLEY	SHIRAZ
750ML	ALCOHOL 14.9% BY VOL

IMPORTED BY ANGELS' SHARE WINE IMPORTS, LLC, BROOKLYN, NY

CONTAINS SULFITES

PRODUCED BY PURE LOVE WINES
PO BOX 777 TANUNDA, SOUTH AUSTRALIA 5352

PRODUCT OF AUSTRALIA

GOVERNMENT WARNING:
(1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.

91337818000108

See Wine Label for Layer Cake, available at <https://delishpickblog.files.wordpress.com/2011/01/nwback1.jpg> (last visited September 22, 2015).

10. Net Contents

This must be indicated in metric units.

4. Name/Address of Bottler

5. Net Content of Bottle

6. Sulfites Message

7. Health Warning

LAYER CAKE
One Hundred Percent Pure
SHIRAZ
VINTAGE 2006

My old grandfather made and enjoyed wine for 80 years. He told me the soil in which the vines lived were a layer cake. He said the wine, if properly made, was like a great layer cake, fruit, mocha and chocolate, hints of spice and rich, always rich. 'Never pass up a layer cake', he would say. I have always loved those words.
A. Orlando

BAROSSA VALLEY	SHIRAZ
750ML	ALCOHOL 14.9% BY VOL

IMPORTED BY ANGELS' SHARE WINE IMPORTS, LLC, BROOKLYN, NY

CONTAINS SULFITES

PRODUCED BY PURE LOVE WINES
PO BOX 777 TANUNDA, SOUTH AUSTRALIA 5352

PRODUCT OF AUSTRALIA

GOVERNMENT WARNING:
(1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.

91337818000108

See Wine Label for Layer Cake, available at <https://delishpickblog.files.wordpress.com/2011/01/nwback1.jpg> (last visited September 22, 2015).

11. Health Statement

4. Name/Address of Bottler

5. Net Content of Bottle

6. Sulfites Message

7. Health Warning

LAYER CAKE
One Hundred Percent Pure
SHIRAZ
VINTAGE 2006

My old grandfather made and enjoyed wine for 80 years. He told me the soil in which the vines lived were a layer cake. He said the wine, if properly made, was like a great layer cake, fruit, mocha and chocolate, hints of spice and rich, always rich. 'Never pass up a layer cake', he would say. I have always loved those words.
A. Orlando

BAROSSA VALLEY	SHIRAZ
750ML	ALCOHOL 14.9% BY VOL

IMPORTED BY ANGELS' SHARE WINE IMPORTS, LLC, BROOKLYN, NY
CONTAINS SULFITES

PRODUCED BY PURE LOVE WINES
PO BOX 777 TANUNDA, SOUTH AUSTRALIA 5352

PRODUCT OF AUSTRALIA

GOVERNMENT WARNING:
(1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.

9337818000108

See Wine Label for Layer Cake, [available at https://delishpickblog.files.wordpress.com/2011/01/nwback1.jpg](https://delishpickblog.files.wordpress.com/2011/01/nwback1.jpg) (last visited September 22, 2015).

There are two warnings that are required appear on alcoholic beverages: (1) “According to the surgeon general, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects” and (2) “Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.”

C. Standards of Identity of Wines

Wines are divided into 9 classes. These classes generally describe the taste, production, method, and composition of the wine.³⁹

Standard of Identity	Description
Grape Wine	This includes table and dessert wine as well and refers to wine produced by the normal alcoholic fermentation of grapes.
Sparkling Wine	This includes sparkling wine and champagne (which is a type of sparkling light wine that gets its bubblyness from the secondary fermentation of the wine in a glass container less than one gallon). Sparkling wine is grape wine made “sparkling” with carbon dioxide that results directly from the fermentation of the wine within a closed container.
Carbonated Grape Wine	This is made effervescent by carbon dioxide <i>other than</i> that resulting from the second fermentation of the wine in a closed container.
Citrus Wine	This is similar to grape wine, but uses different fruits.
Fruit Wine	This is similar to grape and citrus wines, but using other fruits, such as berries.
Wine from other Agricultural Products	This too is similar to grape, citrus, and fruit wine, but uses other agricultural products besides fruit. An example of this would be raisin wine (because it’s made from dried, not ripe grapes) and sake (rice wine).
Aperitif Wine	An example of this is Vermouth; it is a wine with an alcohol content more than 15% and is grape wine with added brandy or other alcohol, and flavoring.
Imitation and Substandard	This is wine containing any synthetic materials (such as wine made from mixing water with residue that remains after pressing grapes) and must state “imitation” wine on the bottle. Similarly, “substandard” wine must be listed as well if it is

³⁹ See 27 CFR §4.21.

	substandard wine (which is too acidic to meet the standard of other wine).
Retsina Wine	This is grape wine with (tree) resin added, usually pine resin. This wine is popular in Greece.

D. Varietal Labeling

This displays the single type of grape used in that wine (e.g., Merlot). Varietal labeling can be used instead of stating a class on the bottle of wine. Under 27 CFR §4.23 (e), only a grape variety name approved by the TTB may be used as a type of designation for American wine. Furthermore, if one uses a grape varietal name, an appellation of origin must also be present on the label. If 75% or more of the wine in the bottle is made from the grape variety named on the bottle, and the entire 75% of the named grape variety was grown in the labeled appellation of the origin, the name of a single grape variety may be used.

Two exceptions to this rule are: (1) wines made from *vitis labrusca* variety may use the name of the grape variety on the label if 51% or more of that wine of the named grape variety was grown in the labeled appellation of origin; and (2) wines made from any variety that the TTB finds to be too strongly flavored at the 75% rate may be labeled with the grape variety if 51% or more of the wine is made from the named grape variety. With either exception, a statement must be made that the wine contains “not less than 51%” of whatever variety it is.

E. Type Designations of Varietal Significance

For American wines, the following type designations may be used if the wine is labeled with an appellation of origin as defined in 27 CFR §4.25.

<u>Type Designation</u>	<u>Description</u> ⁴⁰
Muscadine	This is an American wine that derives at least 75% of its volume from <i>Muscadinia rotundifolia</i> grapes.
Muscatel	This is an American wine that derives its predominant taste, aroma, characteristics and at least 75 percent of its volume from any Muscat grape source.
Muscat or Moscato	This is American wine that derives at least 75% of its volume from any Muscat grape source. Moscato is the Italian name for Muscat.
Scuppernong	This is an American wine which derives at least 75% of its volume from bronze <i>Muscadinia rotundifolia</i> grapes.

⁴⁰ See 27 CFR §4.28.

	It is a large variety of the Muscadine.
Gamay Beaujolais	An American wine which derives at least 75% of its volume from Pinot noir grapes, Valdiguié grapes, or a combination of both.

F. Geography and Winemaking

Wines can be known by the region from which they come. These geographic designations fall into one of three categories: (1) generic, (2) semi-generic, and (3) non-generic.⁴¹

1. Generic

A generic designation is extremely broad. It includes wines such as Sake and Vermouth.⁴²

2. Semi-Generic

A semi-generic wine is a wine made in the U.S., but named after a place that the TTB required to be modified by a U.S. name of geographic origin. This includes wines such as a New York Chablis or a Napa Valley Burgundy.

3. Non-Generic

Non-generic wines refer to a name of geographic significance that is not generic or semi-generic and can only be used to designate wines of the origin indicated by such name. Non-generic wines which are not distinctive designations of specific grape wines include American, California, Lake Erie, Napa Valley, New York State, French, and Spanish. Examples of nongeneric names which are also distinctive designations of specific grape wines are: Bordeaux Blanc, Bordeaux Rouge, Graves, Medoc, Saint-Julien, Chateau Yquem, Chateau Margaux, Chateau Lafite, Pommard, Chambertin, Montrachet, Rhone, Liebfraumilch, Rudesheimer, Forster, Deidesheimer, Schloss Johannisberger, Lagrima, and Lacryma Christi.⁴³

⁴¹ See 27 CFR §4.24.

⁴² See 27 CFR §4.24(a)(2).

⁴³ See 27 CFR §4.24(c).

G. Organic Labeling

1. Overview of NOP

The National Organic Program (“NOP”) is under the control of the USDA’s Agriculture Marketing Service. NOP regulations are found in 7 CFR §205. These regulations address the production, processing, handling, labeling, and marketing of organic products. Three types of organic labeling claims for wines include: (1) organic and (2) made with organic grapes.

2. Organic



“Organic” means that this label is overseen by a certifier who will verify that the wine meets all appropriate specifications in the USDA organic regulations. This means that (a) yeast must be certified organic unless the desired strain isn’t available in organic form, (b) all agricultural ingredients must be certified organic, (c) there can be no added sulfites; and (d) non-agricultural ingredients must be specifically allowed on the NOP list and may not make up more than 5% of the total product.

Organic wine is overseen by the USDA’s National Organic Program and the TTB. Prior to selling organic alcohol, a manufacturer’s label must be approved through

the following steps:

- 1) Certifying agent reviews the alcohol label(s) to assess compliance with USDA organic regulations.
- 2) Certifying agent stamps/signs label(s), verifying compliance with USDA organic regulations.
- 3) TTB permittee (organic operation) completes the Certificate of Label Approval (“COLA”) application.
- 4) TTB permittee submits COLA application and label(s) approved by the certifying agent to TTB. *No longer requires a copy of the organic certificate.*⁴⁴

If the wine is not certified organic, there cannot be any claims that the wine is organic on the “principal display panel” and the bottle cannot use the USDA organic seal on the label. However, on the informational panel, certified organic ingredients can be listed as such. If one

⁴⁴ See USDA’s “Organic Wine: Oversight, Labeling + Trade [available at http://www.ams.usda.gov/sites/default/files/media/Organic%20Wine%20-%20Oversight-Labeling-Trade.pdf](http://www.ams.usda.gov/sites/default/files/media/Organic%20Wine%20-%20Oversight-Labeling-Trade.pdf) (last visited September 22, 2015).

does this, he or she must also “obtain a copy of that ingredient’s organic certificate and submit it to TTB.”⁴⁵

3. “Made with Organic Grapes”



“Made with Organic Grapes” means that 100% of the grapes used were organic and that this was overseen by a certifier who will verify that the wine meets all appropriate specifications in the USDA organic regulations. Interestingly, wine “made with organic grapes” may contain up to 100 parts per million of sulfur dioxide. Although all of the grapes used must be certified organic, the other agricultural ingredients do not need to be. Wines that are not “organic,” but are “made with organic grapes,” cannot use the USDA Organic Shield.

4. Comparison Chart

The chart below helps identify the differences between “organic” wine and wine “made with organic grapes.”

	“Organic”	“Made with Organic Grapes”	Other
Overseen by certifier?	Yes	Yes	No*
USDA organic seal allowed?	Yes	No	No
Organic claims allowed in addition to ingredient statement?	Yes	Yes	No
Added sulfites allowed?	No, only naturally occurring (less than 10 parts per million)**	Yes, sulfur dioxide only up to 100 parts per million. Added sulfites must be disclosed on the label	Yes
Non-organic grapes allowed?	No	No	Yes
Ingredients produced using prohibited	No	No	Yes

⁴⁵ See USDA’s “Organic Wine: Oversight, Labeling + Trade [available at http://www.ams.usda.gov/sites/default/files/media/Organic%20Wine%20-%20Oversight-Labeling-Trade.pdf](http://www.ams.usda.gov/sites/default/files/media/Organic%20Wine%20-%20Oversight-Labeling-Trade.pdf) (last visited September 22, 2015).

methods (such as genetic engineering) allowed?			
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**For wine not in the “organic” or “made with organic grapes” labeling categories ONLY: COLA application must include organic certificates (“crop reports”) for any specific ingredients identified as “organic” on the label.*

****Any statement that indicates a wine contains only naturally occurring sulfites requires a lab analysis.** ⁴⁶

V. WINE TRADE

A. Importation

1. Permits

The first thing that must be done if one wants to import alcohol is to apply for an Importer’s Basic Permit.⁴⁷ The applicant must also complete the Alcohol Dealer Registration Form (TTB Form 4530.5[d]) and obtain a COLA for each product/label. One must also apply for a Wholesaler’s Basic Permit if one plans to sell alcohol beverages other than what is directly imported with the Importer’s Basic Permit. To obtain a COLA, the importer must file an "Application for and Certification/Exemption of Label/Bottle Approval," on TTB 5100.31 (PDF) with TTB’s Advertising, Labeling and Formulation Division (ALFD).⁴⁸

2. Certification

Wines that are imported subject to international agreements or treaties must have proper cellar treatment of the wine (which means it must conform with practices and procedures acceptable to the U.S.). Wines imported from countries without an agreement or treaty need to have a certification regarding practices and procedures used to produce such wine. See 26 U.S.C. 5382. This certification may be either: (1) “a statement from the producing country’s government or government-approved entity having oversight or control of enological practices. This form of certification includes the results of a laboratory analysis of the wine performed by either a government laboratory or a laboratory certified by the government of the producing country” or (2) “a statement from the importer, that is, a ‘self-certification.’”⁴⁹

One may self-certify “if an importer or its affiliate owns or controls a winery operating under a basic permit issued under the FAAA, that importer may certify that the practices and procedures used to produce the wine constitute proper cellar treatment (self-certification). An

⁴⁶ <http://www.ams.usda.gov/sites/default/files/media/Labeling%20Organic%20Wine.pdf> (last visited September 22,2015).

⁴⁷ This can be found at the TTB’s website, available at: <http://www.ttb.gov/ponl/permits-online.shtml>.

⁴⁸ See TTB’s website on importing available at http://www.ttb.gov/itd/importing_alcohol.shtml (last visited September 7, 2015).

⁴⁹ See TTB’s website available at http://www.ttb.gov/itd/importing_alcohol.shtml (last visited September 7, 2015).

importer who self-certifies does not need to obtain a producing country certification and laboratory analysis.”⁵⁰

3. Duties, Taxes, and Fees

Wine importers are responsible for federal excise taxes and duties. The rates can be found at http://www.ttb.gov/tax_audit/atftaxes.shtml and <http://www.cbp.gov/trade/trade-community/duty-tariff-rates/determining-duty-rates> (last visited September 7, 2015).

B. Exportation of Wines

If a winery is not a proprietor of a bonded wine cellar and the winery wants to export taxpaid wine, then the winery must first obtain a permit.⁵¹ Taxpaid wine may be exported to a foreign country, for use as supplies on U.S. vessels and aircrafts, transfer to and deposit into a foreign-trade zone for exportation or storage pending exportation, or shipment to the U.S. armed forces for uses overseas. Any exported wine must have the word “export” on each container or case of wine.

If the winery is a wholesaler and the winery is removed taxpaid or tax determined wine, then the winery can make a claim for drawback of taxes. On the Form TTB 5120.24, there must be acceptable proof of exportation.⁵²

C. New York Transporting/Shipping

1. Direct Shipping

In New York, wine manufacturers can take orders from state residents and ship direct to consumer.⁵³ Out-of-state wineries can ship to New Yorkers if they obtain a permit and the state from where they are shipping must allow New York wineries to ship to their residents as well.⁵⁴ The states currently who participate in this reciprocity include:

Arizona	Massachusetts	South Carolina
California	Michigan	Tennessee
Colorado	Missouri	Texas
Connecticut	Montana	Vermont
Georgia	New Jersey	Virginia
Hawaii	New Mexico	Washington
Idaho	North Carolina	Wisconsin
Illinois	Ohio	
Maryland	Oregon	

⁵⁰ See TTB’s website available at <http://www.ttb.gov/wine/qa.shtml#Q12> (last visited September 7, 2015).

⁵¹ Taxpaid wine is wine on which a tax has already been paid. The federal excise tax is required to be paid when wine is shipped out for sale.

⁵² See 27 CFR §28.40 through 42.

⁵³ See NY ABC Law § 79-d.

⁵⁴ See NY ABC Law §79-c.

2. Shipping

In New York State, any alcoholic beverage being shipped must be with a company with a trucking permit. If a licensee is delivering alcoholic beverages, it may do so in a vehicle that is owned/hired and operated by the licensee.

3. Interstate Shipment

Anyone licensed to sell wine in any other state and obtains an out-of-state “direct shipper’s license” (this is obtained by first providing a fee of \$125.00 and then providing their current license to manufacture wine in the applicant's state of domicile along with a copy of the applicant's federal basic permit) may ship up to 36 cases of wine produced by that person’s winery per year directly to a New York State resident (of course over the age of 21). This must be for direct use by the consumer and not for resale. This only applies to states that have reciprocal shipping privileges for New York wineries.

Licensees are under the obligation to:

- (1) not ship more than 36 cases of wine per year,
- (2) not ship to someone under the age of 21,
- (3) clearly label that the contents “contains wine-signature of person age 21 or older required for delivery – not for resale” (in accordance with NY ABC Law §79-c [3][b]),
- (4) maintain records showing the amount of wine shipped each year, along with the names and addresses of the purchases, the date purchased, the name of the common carrier used to deliver the wine, and the quantity and value of each shipment made,
- (5) require the New York customer to represent that he or she is over the age of 21 and that the wine will not be resold,
- (6) require common carriers to (a) require the recipient at the address to represent that he or she is over the age of 21 and sign a receipt, (b) refuse delivery if the person appears to be under 21,
- (7) file New York tax return and pay all state and local sales taxes and excise taxes,
- (8) keep all records for 3 years,
- (9) permit audits as necessary,
- (10) execute a written consent to the jurisdiction, and
- (11) obtain a certificate of authority pursuant to Section 1134 of the tax law and a registration as a distributor.

See NY ABC Law §79-c.

4. Intrastate Shipping

Once a license is obtained, a winery or farm winery can ship up to 36 cases of wine per year directly to a New York State resident who is (1) over the age of 21 and (2) as long as it is not for resale. The licensee is responsible to ensure that the label containing the wine clearly states: “contains wine-signature of person age 21 or older required for deliver-not for resale.” Additional requirements include: (1) maintaining records for 3 years showing the total amount of wine

shipped each year, the names and addresses of the purchasers, the date purchased, the name of the common carrier, and the quantity and value of each shipment. Shippers must also require the person accepting delivery to show that he or she is over the age of 21 and that the wine will not be for resale.

Intrastate shippers also are required to have common carriers: (1) require the recipient to sign a receipt and also illustrate that he or she is above the age of 21.

VI. RECORD KEEPING

A. Overview

Records are generally reported on TTB Form 5120.17 and are also required if the winery is subject to a TTB excise tax audit. Record keeping requirements are important and more information of what is expected from records is outlined in 27 CFR §24.300-323. Record keeping as discussed when we covered the different types of wineries at the beginning of the presentation, but most of the record keeping requirements only apply to bonded facilities.

B. Receipt of Materials and Production

This is referred to in 27 CFR §24.315. Any producers of wine shall maintain records showing the receipt and use of winemaking materials received on the wine premises. This must include: (1) the date of receipt, (2) the quantity received or quantity used or produced (for juice), (3) the name and address from whom it was received, (4) that date of use or other disposition of the materials. There may also be additional materials and production records which are further outlined in various portions of 27 CFR §24 and cover records required for spirits, sugar, acid, effervescent wine, carbon dioxide, and many other materials.

For bulk still wine records, wines not containing more than 0.392 grams of carbon dioxide per 100 milliliters, there are additional recording requirements, which are covered in 27 CFR §24.301. These include: (1) a summary record maintained by tax class, (2) documentation of wine production, receipts, removals, blending operations, and losses, and (3) may contain information about sugar, acid, chemicals, etc.

C. Bottling and Bottled Wines

If wine is bottled or packaged on site of where it was manufactured, there must be a record by tax class of (1) the volume of wine received, bottled, and removed (either by taxpaid removal, dumped into bulk, broken, used in tastings, etc.), (2) the COLA serial numbers, and (3) results of fill and alcohol tests. In a fill test, the proprietor tests wines bottled or packed during the bottling or packing operation of each bottling or packing line to make sure it is in compliance with its label. In alcohol tests, the proprietor tests the alcohol content to ensure it is consistent with what is stated on the label.⁵⁵

⁵⁵ See 27 CFR §24.255.

D. Removals and Receipts

1. Taxpaid Wine Removed From Bond Record

When a proprietor removes a wine from bond for consumption or sale on determination of tax, a record must be kept. The record must illustrate: (1) the date of removal, (2) the name and address of the person to whom it was shipped, (3) the volume, kind (class and type) and alcohol content. Additionally, per the statute, the volume of wine removed taxpaid must be summarized daily and calculated to the nearest tenth of a gallon.⁵⁶

2. Taxpaid Wine Record

A running inventory must be kept if a wine premise stores taxpaid wine. This inventory must include: (1) a record of receipt, (2) record of removal, and (3) record of cases or containers filled.

3. Taxpaid Wine Returned to Bond

Records must be kept for any unmerchantable taxpaid wine returned to bond in the following manner: (1) with regard to the kind, volume and tax class of the wine, (2) the amount of tax previously paid or determined, (3) the location of the wine premises at which the wine was bottled or packed and the identity of the bonded wine premise from which removed on determination of tax, (4) the date when the wine was returned to bond, (5) the serial numbers or any other identification on the cases or container in which that wine was received, and (6) the final disposition of that wine.

4. Transfer in Bond Record

A transfer in bond is very common. To transfer, proprietors should make sure that they fully comply with the statute. A lot of information is required and includes: (1) the name, address and registry number of the proprietor, (2) the name, address and registry number of the consignee, (3) the shipping date, (4) the kind of wine (class and type), (5) the alcohol content or the tax class, (6) the number of containers larger than 4 liters and cases, (7) serial number of cases or containers larger than 4 liters, (8) any bulk container identification marks, (9) the volume shipping in gallons or liters, (10) the serial number of any seal used, (11) the registry number of the bottler or packer (for unlabeled bottled or packed wine), (12) information necessary for compliance with the statute, such as the varietal name, vintage date, appellation of origin, etc., and (13) information as to an added substance of cellar treatment.

E. Inventories

The following reports are all according to TTB Form 5120.17. The results are reported in this document after inventory is completed. These forms must be signed (under penalty of perjury) and dated.

⁵⁶ See 27 CFR 24.310.

1. Annual Reports

Annual reports are necessary if there are less than 20,000 gallons of wine on hand at any time *and* annual federal excise tax returns will be filed. In this case, TTB Form 5120.17 needs to be filed by January 15th of the following year.

2. Quarterly Reports

Quarterly reports must be filed by April 15th, July 15th, October 15th, and January 15th according to TTB Form 5120.17. One will file a quarterly report if one has less than 60,000 gallons of wine on hand at any time *and* that person is filing a quarterly federal excise tax returns.

3. Monthly Reports

Monthly reports must be filed by the 15th day of the month. This is for anyone that has more than 60,000 gallons of wine on hand at any time *or* pays more than \$50,000 in federal excise tax each year.

VII. OTHER NEW YORK LAWS

A. Wholesaler

To a wholesaler of alcohol, one must have an office in New York State with an employee present during regular business hours. Furthermore, the license will describe the premises and specifically the person designated to sell the wholesale wine. The wine must be sold in sealed containers of less than 15 gallons each.

With an additional fee of \$125.00, the licensee may apply for a certificate to be able to sell at retail to religious organizations.

B. Franchise

There are no New York franchise laws specific to wines. However, the Federal Trade Commission (“**FTC**”) has defined franchise as “any continuing commercial relationship or arrangement, whatever it may be called, in which the terms of the offer or contract specify, or the franchise seller promises or represents, orally or in writing, that:

- (1) The franchisee will obtain the right to operate a business that is identified or associated with the franchisor’s trademark, or to offer, sell, or distribute goods, services, or commodities that are identified or associated with the franchisor’s trademark;
- (2) The franchisor will exert or has authority to exert a significant degree of control over the franchisee’s method of operation, or provide significant assistance in the franchisee’s method of operation; and
- (3) As a condition of obtaining or commencing operation of the franchise, the franchisee makes a required payment or commits to make a required

payment to the franchisor or its affiliate.”16 CFR 436.1(h). Franchise sales process and the relationship between franchisor and franchisee during the term of the franchise are both regulated.

In New York State, a franchisor must submit an application to the New York Department of Law before offers or sales of franchises are made. After the state reviews the application and finally approves it, the application becomes effective, which means the franchisor can offer or sell franchises in New York for one year. After that time, a renewal application must be made. This process is similar to that of other states. Franchise law is a specialty area and there are professionals that focus on this.

C. Advertising

The TTB regulates alcoholic beverage advertising. An advertisement is a written or spoken statement or picture/graphic, which induces sales, commerce, etc. These can be magazine ads, menus, mailers, commercials, etc. Interestingly, the FAAA does *not* require these advertisements to be approved before they appear in print or via broadcasting. However, the TTB does monitor alcohol advertising through referrals and complaints, requests by industry members for pre-clearance (which can avoid any problems in the future), and by an internal selection of advertisements for review by the TTB. The purpose of regulating alcohol advertising is to protect consumers.

Specifically, prohibited wine advertising practices are outlined in 27 CFR Part 4. Generally, prohibited advertising practices include: (1) false or untrue statements, (2) statements that are not consistent with the label, (3) false or misleading statements disparaging a competitor, and (4) misleading guarantees.

Items that *must* be contained in a wine advertisement include:

- 1) Responsible advertiser: The name and address of the permittee responsible for the advertisement’s publication or broadcast must be present.
- 2) Class, type, and distinctive designation: There should be a clear statement of the class, type, or distinctive designation to which the product belongs, corresponding with the statement of class, type, or distinctive designation which is required to appear on the label of the product.
- 3) Exceptions: If an advertisement refers to a general wine line or all of the *wine* products of one company, whether by the company name or by the brand name common to all the wine in the line, the only mandatory information necessary is the name and address of the responsible advertiser. This exception does not apply where only one type of wine is marketed under the specific brand name advertised. See 27 CFR 4.26.

There are no New York specific laws regarding alcohol advertising, but some cities seek to enforce their own regulations (ex: City of Buffalo available at <http://ecode360.com/11767372> [last visited September 10, 2015]).

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