LAW OFFICES
RICHARD D. SIEGEL
SUITE 400
1400 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20036-2220

(202) 518-6364
FACSIMILE (202) 234-0399

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April 1, 2010

Mr. Robert Pooler
National List Coordinator
USDA/AMS/NOP
Room 4008-So., Ag Stop 0268
1400 Independence Avenue S.W.
Washington, DC 20250

Re: Petition to Amend Annotation for Sulfur Dioxide,
In National List, Section 205.605(b),
To Allow Wine with Minimal Amounts of Sulfur Dioxide Added
To Be Labeled as "Organic" Instead of "Made with Organic Grapes"

Dear Mr. Pooler:

This letter is a National List petition to the National Organic Standards Board (NOSB) filed on behalf of the following petitioners:

Organic Vintners, Inc., 1628 Walnut Street, Boulder, Colorado 80302
Barra of Mendocino, 10801 East Road, Redwood Valley, California 95470
Paul Dolan Vineyards, 501 Parducci Road, Ukiah, California 95482
Redwood Valley Cellars, 7051 North State Street, Redwood Valley, California 95470

In addition, several supporters of the organic wine industry have expressed their support for this petition. A list of these supporters is attached at Tab D.

This petition requests an amendment to the annotation for sulfur dioxide on the National List in Section 205.605(b). The listing with the annotation currently reads:

> **"Sulfur dioxide--for use only in wine labeled 'made with organic grapes,' Provided, That total sulfite concentration does not exceed 100 ppm."** ("Sulfur dioxide" and "sulfites" will be used interchangeably in this petition.)

This petition is to eliminate the restriction that if any sulfur dioxide is added, the wine must be labeled "made with organic grapes."

The petition requests that the listing with the annotation be amended to read:

> **"Sulfur dioxide, for use only in wine, Provided, That total sulfite concentration does not exceed 100 ppm."**

Along with the annotation of sulfur dioxide on the National List, another provision in the National Organic Program (NOP) Final Rule, Section 205.301(f) (5), includes language on sulfites in wine. This provision simply refers to and restates the labeling policy in the National List annotation that wine with added sulfites be labeled "made with organic grapes."

If the annotation of sulfur dioxide on the National List is amended as a result of this petition, then the language in Section 205.301(f) (5) should be amended accordingly. Section 205.301(f) (5) should be amended to read: "**(5) Contain sulfites, except in the production of wine, nitrates, or nitrites added during the production or handling process.**"

The Aim of This Petition

The annotation for sulfur dioxide on the National List reserves the "organic" label on wine for wine that does not contain added sulfites. Any wine containing added sulfites must be labeled "made with organic grapes" and is not eligible to be labeled "organic." This two-tier labeling for wine, "organic" and "made with organic grapes," is governed entirely by whether the wine contains added sulfites.

This means that the labeling rule for wine is sharply different from the "organic" and "made with organic..." labeling standards that apply to processed food products. This discrepancy between the labeling rule for wine and the labeling rule for processed food has led to much misunderstanding and confusion, which we will describe in full detail below. In order to make the NOP Final Rule more consistent and understandable to the consumer, the labeling rule for wine must become the same as for processed food. The amendment proposed in this petition is intended to accomplish that.

The requirement that any wine with added sulfites must be labeled "made with organic grapes" illustrates the gap between the labeling for wine and the labeling for processed food. Even if a wine would meet or exceed the 95 percent requirement for "organic" labeling, this wine may not be labeled as "organic" as long as it contains added sulfites. Sulfites are allowed on the National List, therefore they are allowed in wine produced under the NOP standards. However, the annotation restricts the labeling of wine that uses added sulfites to the "made with organic..." claim.

In food labeling, when foods have 95 percent organic content and thus may be labeled, "organic," this clearly distinguishes them from foods in the "made with" category, which are required to have only 70 percent organic content. Yet in the wine category, there is daily confusion over what "made with organic grapes" means. Because the "made with..." label standard for processed food has a 70 percent minimum organic content, the NOP has determined that a wine "made with organic grapes" requires only 70 percent organic grapes. Yet if a wine is made entirely from organic grapes, but has added sulfites, it must be sold under the same label term, "made with organic grapes," as wines that have only 70 percent organic grape content.

This is why the labeling policy for wine is defective and causes confusion. The existing policy does not serve either consumers or the organic wine sector. This petition proposes lifting the special labeling restriction for wines with added sulfites. The result would be that any wine that can meet the normal organic threshold, 95 percent organic ingredients, would be eligible to be labeled as "organic," whether it has sulfites added or not.

The NOP and TTB[1] have recently recognized that as the label "made with organic grapes" has allowed wine with that label to contain only 70 percent organic grapes, this has permitted wine makers to make blends of 70 percent organic grapes and 30 percent non-organic grapes while using the label "made with organic grapes." To curb this abuse, the NOP and TTB issued a new policy in June 2009. The new policy states that if wine contains 70 percent organic grapes and other grapes that are non-organic, the front label must read "Made with Organic Grapes and Non-Organic Grapes" or another term to indicate the use of non-organic grapes along with organic grapes.

While this new policy is correct in requiring wine made with only 70 percent organic grapes to disclose on the front label that it has non-organic grapes, the policy does not address the problem of wine that is made entirely with organic grapes and yet is saddled with the label "made with organic grapes." In fact, it complicates the situation by introducing a new label term in the "made with" category. Consumers looking for wine that is wholly made from organic grapes will continue to be confused by the label "made with organic grapes," because the term "made with..." is so strongly identified with products in the food category that have only 70 percent organic content. The introduction of a new wine label category, "Made with Organic Grapes and Non-Organic Grapes," only increases the consumer's confusion about any and all wines that are labeled "made with organic grapes."

A superior organic wine product made entirely from organic grapes should be eligible to be labeled as "organic." It should not have to be labeled "made with organic grapes." Now that

[1] "TTB" is the abbreviation for the Alcohol and Tobacco Tax and Trade Bureau in the U.S. Department of the Treasury.

the NOP and TTB have introduced the new label category "Made with Organic Grapes and Non-Organic Grapes," it is urgent that wine made entirely from organic grapes be recognized as "organic," and not confused with other wine that is required to have only 70 percent organic grape content.

The aim of this petition, then, is to change the NOP regulations so that all wine with at least 95 percent organic content can be labeled as "organic," whether or not it contains minimal amounts of added sulfites. This would end the special labeling rule for organic wine, and would put wine under the general rules for "organic" and "made with organic..." labeling.

This change in the rule would benefit both consumers and the organic wine industry. It would give an incentive to wine makers to bring out more wines using solely organic grapes, because this would allow them to label their wines as "organic," even if they add sulfites. Once wines that use only organic grapes can be labeled more clearly as "organic," this will spur demand for such wines and lead to a dramatic increase in certified organic vineyard acreage, a positive development for the entire organic community.

This Petition Can Be Expedited
Because It Would Not Call for a TAP Review of Sulfur Dioxide

In the text of the Final Rule, 7 CFR § 205.301(b) and (c) establish labeling policy for processed products. However, the labeling policy for wine is not found in these sections. Instead it is found in the National List as part of the annotation for sulfur dioxide. If an affected party wants to request a change in any part of the text of the National List, including an annotation to a listing, it must submit a National List petition to the NOSB. This is why this request for a change in the labeling policy for wine is coming before the NOSB as a National List petition.

This petition will follow the format of a policy brief, not the format of the Guidelines on Procedures for Submitting National List Petitions, published in the Federal Register on January 18, 2007. We reviewed the Guidelines carefully and concluded that they did not apply to this petition. The Guidelines apply to petitions to add a substance to or remove a substance from the National List, or petitions to change an annotation to expand the permitted use of the substance. This petition does not fit into any of these categories.

This petition is not requesting an expansion of the permitted use of sulfur dioxide, because in the existing annotation, sulfur dioxide is already permitted for use in wine. With this permitted use established, the annotation goes on to impose a preference in labeling. Wine without added sulfur dioxide is preferred over wine with added sulfur dioxide, because wine without added sulfur dioxide may be labeled as "organic," while wine with added sulfites may

not be labeled "organic" or display the USDA Organic seal. Instead it must be labeled "made with organic grapes."

This petition is aimed at eliminating this preference in labeling, this separate rule for the labeling of wine that is different from the standard rule for labeling products as "organic" and "made with organic..." in 7 CFR § 205.301(b) and (c). There is no role in this petition for a further TAP review, because the petition deals only with the policy question of how wine with sulfur dioxide should be labeled. This should permit the NOP to review this petition and submit it to the Handling Committee on an expedited basis.

Now we will present the grounds for the petition in more detail.

GROUNDS FOR THE PETITION

This petition should be approved for the following reasons:

1. NOP Has Made a Separate Rule for Wine Labeling
   That Is at Odds with the NOP Food Labeling Rules.

2. The Label "Made with Organic Grapes,"
   Confuses and Misleads Wine Consumers.

3. Because Wine with Only 70 Percent Organic Grapes
   Must Now Be Labeled "Made with Organic Grapes and Non-Organic Grapes,"
   Wine "Made with" Only Organic Grapes Should be Labeled "Organic"
   To Eliminate Further Confusion over the "Made with" Label on Wine

4. Boxer-McConnell Amendment to OFPA in 2000
   Allowed Sulfites for the Production of "Organic" Wine;
   Canada and the EU Both Accept Added Sulfites in "Organic" Wine

5. The NOSB Should Review the Wine Labeling Policy Now
   Because in 2000 There Was No Opportunity for Public Comment
   Before the Policy Was Included in the Final Rule.

1. NOP Has Made a Separate Rule for Wine Labeling That Is at Odds With the NOP Food Labeling Rules.

As we have noted above, under the existing annotation for sulfur dioxide, the label of "organic" wine is reserved only for wine without added sulfites, while wine with added sulfites is assigned to the lower labeling category, "made with organic grapes." This is directly at odds with the NOP's standards for labeling of processed food products.

For processed foods, those with at least 95 percent organic content may be labeled "organic." An "organic" processed food may include up to 5% non-agricultural ingredients that are on the National List. To be labeled "made with organic...," foods need only 70 percent organic content.

Take a wine that is made entirely from organically grown grapes, with sulfites as the only nonorganic ingredient added. According to the listing of sulfur dioxide on the National List, total sulfite concentration may not exceed 100 parts per million (ppm). Thus the organically grown ingredients would represent at least 99.99 percent of the wine. If this wine were labeled under the same rules as for processed foods, this wine would definitely qualify as "organic." Yet because of the different rule for wine labeling, the wine may not be labeled "organic" and instead must be labeled "made with organic grapes."

The aim of this petition is to bring the labeling of organic wine into conformity with the labeling of all other organic processed food products. Wine made from organically grown grapes that has more than 95 percent organic content and uses sulfur dioxide, an approved substance on the National List, should be able to be labeled as "organic," just as if it were any other processed food.

2. The Label "Made with Organic Grapes" Confuses and Misleads Wine Consumers.

The NOP Final Rule established two categories for wine, "organic" and "made with organic grapes." Wine is not a multi-ingredient food product, but a product made from just one ingredient, grapes. Having two labels to apply to a single ingredient product has been a recipe for confusion.

A very small number of wines, from only a few wineries, are made without added sulfites. Because they do not contain added sulfites, these wines alone qualify to use the "Organic" label claim. They may display the USDA Organic seal anywhere on the bottle, including the principal display panel.

Then there are the wines labeled according to the NOP as "made with organic grapes." The sole reason for this labeling difference is that those wineries add minimal quantities of sulfites to stabilize and preserve the flavor. The wine industry has followed this practice universally for hundreds of years. The rigid rule that reserves the "organic" label only for wines without added sulfites does not reflect the reality that wine making depends on adding minimal quantities of sulfites, because no natural substitute has been found.

If a wine is made exclusively from organically grown grapes but with added sulfites, this wine must be labeled "made with organic grapes," rather than "organic." It may not use the USDA Organic seal anywhere on the bottle. The sole reason is that it has added sulfites, even though the National List limits the total concentration of sulfites to only 100 ppm. By comparison, in conventional wines, Federal regulations permit sulfite content of up to 350 ppm.[2]

Wineries that add sulfites and thus label their wines "made with organic grapes" use the bulk of the organic grapes grown in the United States. They far outnumber the few wineries that do not add sulfites and thus qualify for the "organic" label. California Certified Organic Farmers (CCOF), the leading certifier of organic vineyards and wineries, has informed petitioners that it currently certifies 44 wineries for the "made with organic grapes" label, compared to 11 wineries for the "organic" label.

The same situation prevails among wine producers overseas that use organic grapes, are NOP-certified and export their wine to the United States. Almost none of these foreign wine producers make their wine without adding sulfites. There is no indication that these NOP-certified wineries, either in the United States or in foreign countries, are prepared to try to become "organic" by not adding sulfites, even though they are using organically grown grapes.

The label "made with organic grapes" causes three types of confusion for consumers:

First, because in "made with organic..." food products only 70 percent of the ingredients must be organic, consumers expect that in wine labeled "made with organic grapes," the same 70 percent standard applies. Yet for wine that is made only from organic grapes and has added sulfites, the label "made with organic grapes" is the only label permitted. It is confusing and misleading to label such wine "made with organic grapes" when it is made entirely from organic grapes.

Second, the "made with organic grapes" label conveys the perception that because the wine is labeled "made with organic grapes" rather than "organic," it somehow lacks full organic integrity. This is misleading. In terms of the basic organic integrity of the wine, that is, the

[2] 27 CFR § 4.22(b)(1)

source of the grapes, there is no difference between "organic" wine and wine "made with organic grapes" if all the grapes used are organically grown.

One of the petitioners, Organic Vintners, recently commissioned a public opinion survey that illustrates this confusion among consumers when it comes to organic wine labeling. The consumers surveyed included shoppers who "always" bought organic food (12 percent); "sometimes" did (75 percent) and "never" did (12 percent).

Across the entire group, 38 percent answered that the wine label "made with organic grapes" meant that the wine was made with at least 50 percent organic grapes, and another 13 percent thought this meant the wine was made with at least 70 percent organic grapes. In other words, just over half the respondents thought the label "made with organic grapes" was not fully organic because they associated the label "made with organic grapes" with organic grape percentages of 50 percent or 70 percent rather than 100 percent. (The survey results are attached at Tab A.)

Third, when wine is labeled "made with organic grapes," it is not clear to consumers that the winery has been certified under the NOP organic regulations. This is because these wines are not allowed to display the USDA Organic seal on the principal display panel or anywhere else on the labeling of the bottle.

In fact, wineries producing wine "made with organic grapes" must be certified operations under the NOP. To make that claim, these wineries must be certified, just as the wineries that make "organic" wine. While they must show the certifier's seal on the bottle, this is on the information panel, not the principal display panel.

All this confusion arises because the NOP has two separate labels for wine, "organic" and "made with organic grapes," that do not distinguish wines based on their organic grape content but instead on whether they happen to have added sulfites.

For example, Organic Vintners, Inc. is an importer and distributor of wines from NOP-certified wineries that use added sulfites. The petitioner Barra of Mendocino is an NOP-certified wine grape grower and wine producer that uses added sulfites. The wines that these two petitioners market are made exclusively from organically grown grapes. They come from NOP-certified wineries. Organic Vintners and Barra are required to label their wine "made with organic grapes." This labeling does not convey to the average consumer the essential information that their wines are made only from organic grapes and that the winery has had to meet NOP standards as well.

The confusion that stems from the present NOP organic wine labeling rule has had a decidedly negative effect on the development of the organic wine industry. It has caused the organic wine market to lag far behind the other categories of organic products. Organic food accounts for approximately 3.5 percent of the overall food market. Organic wine, by contrast, is only 0.2 percent of the wine market.

Because wines that use only organically grown grapes and add sulfites are not able to use the "organic" label claim, this deprives wineries of the market advantage of the "organic" label that would encourage them to bring out the widest possible selection of wines with organically grown grapes. This has crippled the growth of the organic wine category, depriving U.S. wine consumers of the chance to enjoy the full potential range of wines from organic grapes.

Just as the uniform USDA organic standards and the USDA Organic seal dispelled consumer confusion after 2002, setting the stage for the phenomenal growth of the organic sector since then, the petitioners believe it is critical to the future of the organic wine trade to have a simpler and more consistent NOP organic wine labeling standard.

3. Because Wine with Only 70 Percent Organic Grapes
Must Now Be Labeled "Made with Organic Grapes and Non-Organic Grapes,"
Wine "Made with" Only Organic Grapes Should be Labeled "Organic"
To Eliminate Further Confusion over the "Made with" Label on Wine

As we have noted, the label claim "made with organic grapes" leads consumers to believe that wine with this label is made with no more than 70 percent organic grapes. For the wines that are made exclusively from organic grapes and happen to have added sulfites, the fact that these wines must be labeled "made with organic grapes" rather than "organic" has been a penalty on them that has hindered the growth of the entire organic wine industry.

The regulations for the composition and labeling of "made with organic..." processed products are one of the most complicated parts of the NOP Final Rule. When the NOP was working at the last minute in late 2000 to complete and publish the Final Rule, it decided that any wine with added sulfites should be labeled as "made with organic grapes," regardless of the level of organic grape content. This meant that any wine labeled "made with organic grapes" would be linked to the "made with organic..." category in food, which requires only a 70 percent level of organic content. This has now come back to haunt the organic wine industry.

The experience since the Final Rule was implemented in 2002 underscores why wines that are made entirely from organic grapes clearly deserve to have their labeling upgraded out of the category of wines labeled "made with organic grapes." A wine with added sulfites that is made entirely from organic grapes far exceeds the standard for "made with organic grapes."

Under the standards in the Final Rule for products labeled "made with organic...," it is technically permitted to market wine as "made with organic grapes" when only 70 percent of the grapes are organically grown.[3] Moreover, while many would say that wine has only one ingredient, grapes, the NOP has determined that each varietal of grape, whether a Cabernet or a Merlot, is considered a separate ingredient. Therefore, until recently a winery could qualify for the "made with organic grapes" label by blending two varietals, an organic varietal constituting 70 percent, and a non-organic varietal for the rest.

On June 2, 2009, TTB and the NOP issued a new policy recognizing that because organic and non-organic grapes can be used in the same wine labeled "made with organic grapes," the labels on such wine should be expanded to disclose this, in order not to mislead consumers.

The TTB "Information Sheet on New Organic Labeling Policies," provided that when wine is to be labeled "Made with Organic Grapes" and contained both organic and non-organic grapes, the statement, "Made with Organic Grapes" on the label "must indicate the presence of non-organic grapes" in that statement on the label. It gave as examples, "Made with Organic Grapes and Non-Organic Grapes" or "Made with Organic [variety] Grapes and Non-Organic [variety] Grapes." (The Information Sheet and the TTB "Guidelines for Labeling Wine with Organic References," are attached at Tab B.)

Now that the NOP and TTB have introduced the new wine label, "Made with Organic Grapes and Non-Organic Grapes," this ensures that wine that is only 70 percent made from organic grapes will be clearly and accurately labeled. However, this still leaves the consumer confused as to wine that is 100 percent made from organic grapes. That wine continues to be labeled "made with organic grapes" as long it has added sulfites.

There is still no way for the consumer to recognize that a wine labeled "made with organic grapes" is made only from organic grapes. The problem is the wording "made with," which the NOP and TTB have now expanded to include both organic and non-organic grapes. This has heightened the confusion surrounding any wine label with the term "made with."

There needs to be a sharp contrast in labeling between wine "made with organic grapes," which implies that it has only 70 percent organic grapes, and wine that is entirely made from organic grapes. The best way to achieve it is to apply the 95 percent standard to wine and allow

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[3] Under 7 CFR § 205.301 (f) (7), products labeled as "organic" may not include "organic and nonorganic forms of the same ingredient." However, the regulation, at § 205.301(c), relaxes the requirements for the ingredients used in products labeled "made with organic..." Under § 205.301(c), ingredients in products "made with organic..." are not subject to the prohibition in (f) (7) against using "organic and nonorganic forms of the same ingredient."

any wine that has all organic grapes to be labeled "organic" instead of "made with organic grapes."

4. Boxer-McConnell Amendment to OFPA in 2000
Allowed Sulfites for the Production of "Organic" Wine;
Canada and the EU Both Accept Added Sulfites in "Organic" Wine

In the original text of OFPA, certified organic handling operations were prohibited from adding any "sulfites, nitrates, or nitrites" to organic products. (7 U.S.C. § 6510(a) (3)). In 2000 Congress amended this provision in OFPA to allow sulfites "in the production of wine." This was the Boxer-McConnell amendment to OFPA.[4]

The Boxer-McConnell amendment enabled sulfur dioxide to be listed on the National List as an approved synthetic substance in 7 CFR § 205.605(b). The Boxer-McConnell amendment made it possible for wine that contained added sulfur dioxide and was made from at least 95 percent organic grapes to be labeled as "organic."

The rationale of the Boxer-McConnell amendment was to recognize the widespread and historical use of sulfites in wine making. Some sulfites are naturally present in wine as a byproduct of fermentation, so no wine can claim to be sulfite-free. The reason wine makers add minimal amounts of sulfur dioxide to wine is to control oxidation and microorganisms, thus stabilizing and preserving the flavor of the wine. The National List limits sulfite concentration to only 100 parts per million. In fact, most wines with organically grown grapes contain even less sulfites, from 40 to 80 ppm. As mentioned earlier, in conventional wines Federal regulations allow added sulfites up to 350 ppm.

While a very small number of wine makers produce their wine without adding sulfites, which allows them to call their wine "organic" under the NOP, adding sulfites in these minute amounts has been generally acknowledged as the prudent practice in wine making. Wine makers in ancient Greece and Rome started the practice. The modern application of added sulfites in wine became widespread after 1487, when a Prussian royal decree gave official permission to use sulfur dioxide in wine. Since then sulfites have been used almost universally in wine making.

Sulfur dioxide was retained on the National List after the 2007 sunset process. During the sunset process, members of the wine industry submitted comments in August 2005

[4] On July 20, 2000, the Senate adopted the Boxer-McConnell amendment to OFPA, attaching it to the pending Agriculture appropriations bill. The provision became part of the final bill signed by the President as Public Law 106-387 on October 28, 2000.

explaining why sulfites should be kept on the National List. (The comments are attached at Tab C.)

Even though the Boxer-McConnell amendment permitted wine with added sulfites to be labeled as "organic," the NOP, as we have pointed out earlier, chose to restrict the labeling for all wine with added sulfites to the less favorable and more confusing label, "made with organic grapes."

If wine can meet the 95 percent organic content threshold, then the use of this allowed substance, sulfites, in the remaining 5 percent at a level of no more than 100 ppm, should not prevent that wine from being labeled "organic." There is no rational basis for, on the one hand, allowing sulfur dioxide to be used in "organic" wine by placing it on the National List, as the Boxer-McConnell amendment intended, while on the other hand, penalizing those wine makers that use only organically grown grapes and also add sulfites, by depriving them of the right to label their wine as "organic."

Finally, if the annotation for sulfur dioxide is amended as a result of this petition, the U.S. would join both Canada and the EU in recognizing that organic wine with added sulfites should be labeled as "organic." In 2009 the U.S. and Canada mutually recognized that their organic regulations were "equivalent." However, Canada accepts added sulfites in "organic" wine and the U.S. does not. This looms as a potential conflict in the "equivalency" arrangement between the two countries. This would be solved if the NOP annotation were amended to allow wine to qualify as "organic," with added sulfites allowed.

Canada's organic regulation today allows organic wine with added sulfites to be labeled as "organic" and display the Canadian organic seal. Prior to October 1, 2008, Canada allowed sulfites in organic wine only if the wine was labeled "Contains X% organic ingredients," rather than "organic."[5] However, on October 1, 2008, Canada amended its Permitted Substances Lists to eliminate the special labeling requirement,[6] so that in Canada wine with added sulfites may be labeled as "organic wine."

Throughout the development of the Canadian Organic Regime (COR), Canada was well aware of the organic wine labeling policy in the NOP Final Rule, which penalized wine with added sulfites with a less favorable label than "organic." While Canada adopted many of the features of the NOP Final Rule in its COR, it chose not to emulate the Final Rule when it came to wine labeling.

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[5] See Canadian General Standards Board, Organic Production Systems, Permitted Substances Lists, CAN/CGSB-32.311-2006, "Sulphurous Acid," page 20.

[6] See Permitted Substances Lists, CAN/CGSB-32.311-2006, Amended October 2008, "Sulphurous Acid," page 18.

As a result of the Canadian rules, wine from the U.S. made exclusively from organically grown grapes is being exported to Canada and sold in Canada as "organic" with the Canadian organic seal on the principal display panel, even though the wine has added sulfites. In the U.S. this same wine must be sold under the label "made with organic grapes" without the USDA Organic seal. This ironic situation illustrates that the organic wine labeling policy in the NOP final rule is outmoded and needs to be reformed.

Like Canada, the European Union is expected shortly to enact a regulation that will allow sulfites in "organic wine." On December 14-15, 2009, the European Commission presented its draft regulation on organic wine to the EU's Standing Committee on Organic Farming, "with a view to conclude the discussion" by focusing on certain remaining topics.[7] The Commission's latest draft regulation sets maximum levels for sulfur dioxide but within those limits, fully accepts sulfur dioxide use in "organic wine." [8]

5. The NOSB Should Review the Wine Labeling Policy Now Because in 2000 There Was No Opportunity for Public Comment Before the Policy Was Included in the Final Rule.

Finally, another compelling reason for the NOSB to reconsider the annotation for sulfur dioxide is that the NOP did not follow the correct procedure in December 2000 when it issued the annotation in the Final Rule. The NOP never issued the annotation as a proposed regulation for comment. Instead the annotation became a final regulation without ever becoming a proposed regulation. There was no opportunity for public comment.

The annotation to restrict the labeling of wine with added sulfites to "made with organic grapes" had a convoluted history. Originally the NOSB had recommended at its March 1998 meeting that in listing sulfur dioxide on the National List, the annotation provide "Sulfur dioxide is allowed only for use in production of wine that is labeled 'made with organically grown grapes.'" However, the NOP set this recommendation aside as not consistent with OFPA. At that time OFPA prohibited organic handlers from adding sulfites to wine or any other product.

When the NOP published its proposed rule on March 13, 2000, there was no listing at all for sulfur dioxide on the proposed National List. In the preamble to the proposed rule, the NOP explained that it could not accept the NOSB recommendation because OFPA prohibited any

[7] See Short Report of the 88th Meeting of the Standing Committee, Section B, Item 1.
[8] See Organic Wine, Working document rev3 to amend Regulation (EC) No 889/2008, clause (8), page 2, dealing with "sulphites," and proposed language on "sulphur dioxide," page 5.

"sulfites, nitrates and nitrites" for use by handlers of organic products, under 7 U.S.C. § 6510(a) (3).[9]

Then on July 20, 2000, the U.S. Senate passed the Boxer-McConnell amendment as part of an Agriculture appropriations bill. As we have noted above, this legislation amended OFPA at 7 U.S.C. § 6510(a) (3) to allow the use of sulfites in the production of wine. This gave the Department the statutory authority it needed to include sulfur dioxide used in wine on the National List. However, the bill containing the Boxer-McConnell amendment did not become law until October 28, 2000. This came less than eight weeks before the NOP published the Final Rule on December 21, 2000.

This caused the NOP to add the listing for sulfur dioxide and the annotation dealing with labeling to the Final Rule at the last minute. OFPA, at 7 U.S.C. 6517(d) (4), requires that before the NOP establishes any part of the National List, the NOP must first publish it as a proposed regulation for comment. However, in the case of the listing of sulfur dioxide and its annotation, the NOP never published this listing and annotation as a proposed rule with the opportunity for public comment. Instead, it simply made the listing and the annotation part of the Final Rule without going through the proposed rule stage. Because this process did not allow for public comment, the NOSB has a special responsibility now to review it.

The NOP explained in the Preamble to the Final Rule that it was adopting the annotation on labeling because the NOSB had earlier recommended it.[10] However, it was not sufficient for the NOP to justify its action solely on the basis that the NOSB had made the recommendation to the NOP back in March 1998. That 1998 recommendation should not be given much weight because at the time the NOSB made the recommendation, OFPA did not even permit sulfites in wine.

Since the organic wine labeling policy in the annotation for sulfur dioxide was never published for public comment before it became part of the Final Rule, the NOSB now has a responsibility to reconsider it and recommend a new up-to-date organic wine labeling policy that will be in the interest of the entire organic community.

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[9] Preamble to Proposed Regulation, March 13, 2000, 65 Fed.Reg. 13587.
[10] Preamble to Final Rule, December 21, 2000, 65 Fed.Reg. 80614.

CONCLUSION

For the reasons stated, the petitioners respectfully request that the National Organic Standards Board recommend to the National Organic Program that the annotation for sulfur dioxide in the National List at 7 CFR § 205.605(b) be amended to read as follows:

> **"Sulfur dioxide, for use only in wine, Provided, That total sulfite concentration does not exceed 100 ppm."**

and that Section 205.301(f) (5) should be amended to read:

> **"(5) Contain sulfites, except in the production of wine, nitrates, or nitrites added during the production or handling process."**

Respectfully submitted,

Richard D. Siegel

Richard D. Siegel
Counsel for Petitioners

Attachments

ATTACHMENT A

Survey Commissioned by Organic Vintners, Inc.

"Marketing Analysis of Consumer Knowledge of Organic Wine"

December 2009

Conducted by Hailey Broderick and Emily Miller

University of Colorado, Leeds School of Business

Organic Vintners: Marketing Analysis of Consumer Knowledge of Organic Wine

December 2009

Conducted by: Hailey Broderick and Emily Miller

University of Colorado—Leeds School of Business

Summary:

Survey conducted: November 6 - December 7 2009

Number of Participants: 166

Number of States Represented: 19 States

Background:

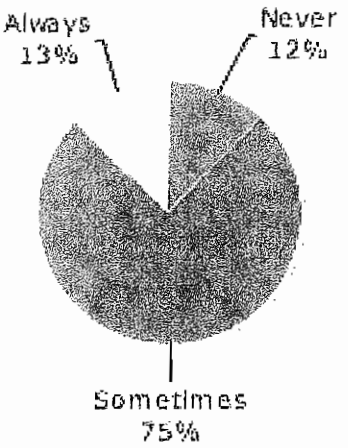
Our goal in conducting this study was to assess consumer knowledge regarding organic wine. Organic Vintners, an organic wine distributor in Boulder, Colorado, wished to test the hypothesis that there is a lack of understanding regarding organic wine among LOHAS-like consumers. To test this hypothesis, we surveyed 166 people around the United States via an online survey. The survey consisted of five questions:

1. How often do you buy organic food?
2. How often do you drink wine?
3. How often do you seek out organic wine?
4. If you see a wine label that reads "made with organic grapes", then the wine is made with...
5. What state do you live in?

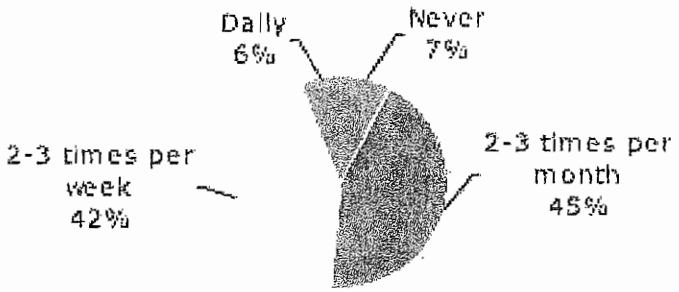
The purpose of this selection of questions was to determine whether there is a correlation between regular organic shoppers and their knowledge of organic wine. The results indicate that there is ***not*** a correlation between those who typically shop for organic products and their relative knowledge of organic wine. They showed little understanding about the actual organic standards for wine. Only 37% of respondents overall correctly answered that a wine label that reads "made with organic grapes" means that the wine is made with 100% organic grapes. Further, only 36% of respondents who "Always" or "Sometimes" shop for organic food responded correctly. 39% of organic shoppers responded incorrectly that made with organic wine means it is made with 50% organic grapes. Surprisingly, out of the three participants who "Always" seek out organic wine, only one correctly answered the question about 100% organic grapes.

The results of this survey demonstrate that there is a disconnect between what consumers appreciate in organic food and what they understand about organic wine.

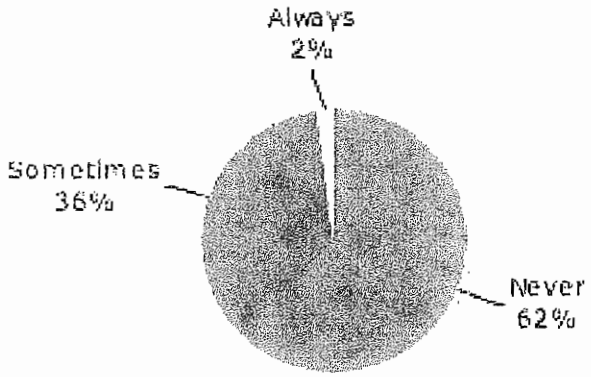
How often to you buy organic food?



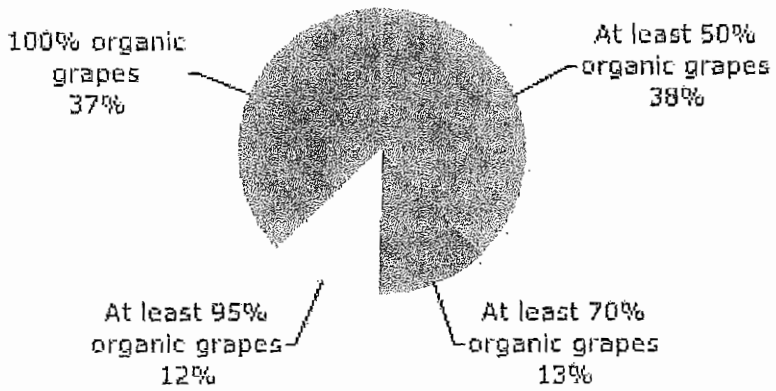
How often do you drink wine?

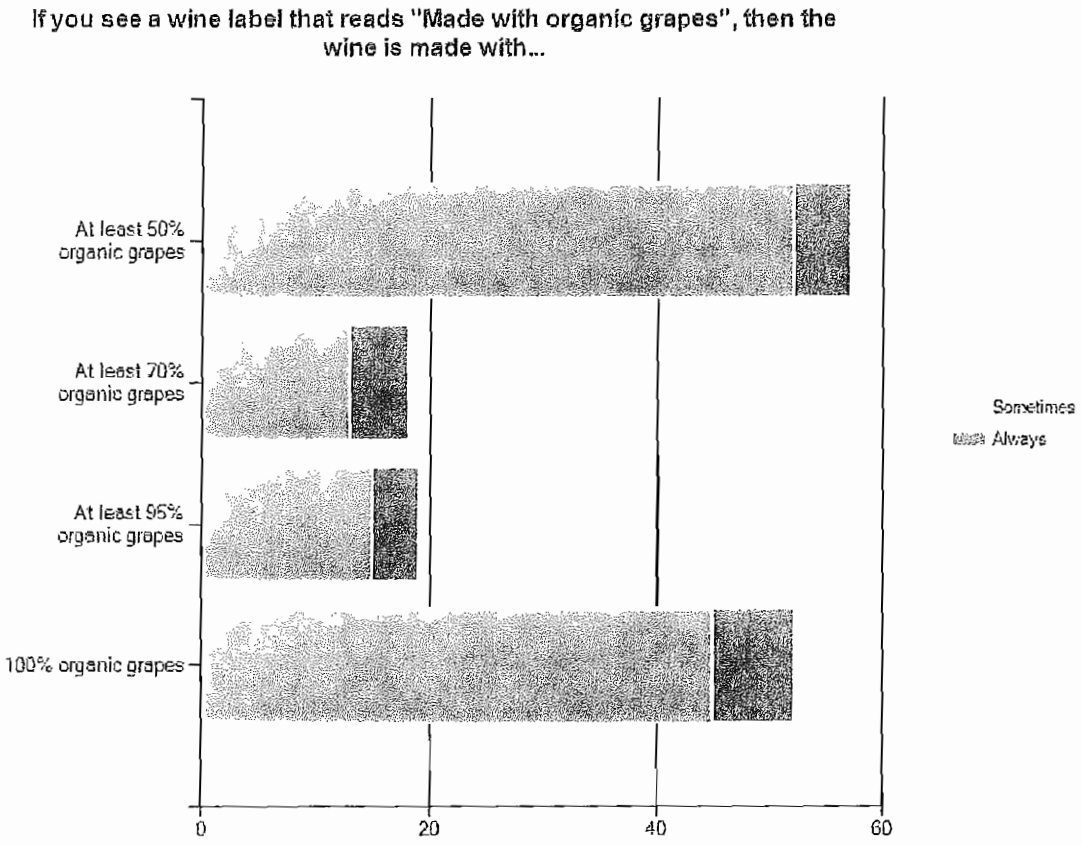


How often do you seek out organic wine?



If you see a wine label that reads "Made with organic grapes", then the wine is made with...





This chart represents those who responded that they "Always" or "Sometimes" shop for organic food and their response to the question "If you see a wine label that reads 'made with organic grapes', then the wine is made with..." 36% responded correctly that it is made with 100% organic grapes, while 39% responded that it is made with at least 50% organic grapes.

How often do you purchase organic food?			How often do you drink wine?				How often do you seek out organic wine?			If you see a wine label that reads "Made with organic grapes", then the wine is made with...				What state do you live in?		
Never	Sometimes	Always	Never	2-3 times a month	2-3 times a week	Daily	Never	Sometimes	Always	At least 50% organic grapes	At least 70% organic grapes	At least 95% organic grapes	100% organic grapes	State	State Totals	
	1				1			1		1				CO	63	Minnesota
	1			1			1			1				CO	32	Colorado
	1				1		1			1				CO	21	Illinois
	1				1		1					1		CO	15	Vermont
1					1		1				1			CO	9	New York
1				1			1						1	CO	5	Indiana
	1			1			1			1				CO	3	Massachusetts
		1		1				1				1		CO	2	North Carolina
	1				1		1						1	VT	2	Virginia
	1			1				1			1			CO	1	Nevada
	1				1		1						1	CO	1	Tennesse
	1				1			1					1	CO	1	South Carolina
	1			1			1			1				CO	1	Washington
	1			1			1						1	CO	1	Montana
	1				1			1				1		CO	1	New Hampshire
	1			1			1			1				CO	1	Pennsylvania
	1				1		1			1				MA	1	Wisconsin
	1				1		1			1				NY	1	California
	1		1				1			1				IL	1	Michigan
1				1			1			1				NY		
	1			1				1		1				NY		
		1		1				1					1	CO		
		1			1			1			1			MN		
	1				1		1			1				VT		
	1				1			1					1	VT		
		1				1	1						1	CO		
1			1				1						1	CO		
	1		1					1		1				MN		
	1				1		1					1		CO		
	1			1				1				1		IL		
		1			1			1			1			NY		
	1			1			1						1	MN		
	1				1		1			1			1	MN		
		1		1				1		1				MN		
		1		1					1	1				MN		
	1			1			1			1				IL		

How often do you purchase organic food?			How often do you drink wine?				How often do you seek out organic wine?			If you see a wine label that reads "Made with organic grapes", then the wine is made with...				What state do you live in?		
Never	Sometimes	Always	Never	2-3 times a month	2-3 times a week	Daily	Never	Sometimes	Always	At least 50% organic grapes	At least 70% organic grapes	At least 95% organic grapes	100% organic grapes	State	State Totals	
	1			1			1						1	IL		
	1					1	1						1	MN		
		1	1				1						1	IL		
	1				1			1					1	IL		
	1				1			1					1	MA		
	1				1		1						1	NY		
	1				1			1		1				MN		
	1				1			1		1				MN		
	1			1			1						1	MN		
	1				1		1						1	MN		
	1			1			1						1	MN		
	1			1					1				1	MN		
	1				1			1					1	MN		
	1			1				1				1		MN		
	1				1		1			1				MI		
	1				1		1				1			NV		
	1			1			1						1	MN		
	1			1			1						1	MN		
	1			1			1			1				MN		
	1			1			1			1				WI		
	1		1				1						1	CO		
	1		1				1						1	WA		
	1			1			1						1	MN		
		1			1			1			1			MN		
	1			1			1				1			MN		
	1			1				1		1				TN		
	1				1			1		1				MN		
		1		1			1			1				MN		
	1			1			1			1				VA		
	1		1				1			1				MN		
		1			1				1		1			SC		
	1			1			1			1				MN		
	1				1		1			1				MN		
1					1		1						1	MN		
	1				1		1						1	MN		
	1			1				1		1				MN		

How often do you purchase organic food?			How often do you drink wine?				How often do you seek out organic wine?			If you see a wine label that reads "Made with organic grapes", then the wine is made with...				What state do you live in?		
Never	Sometimes	Always	Never	2-3 times a month	2-3 times a week	Daily	Never	Sometimes	Always	At least 50% organic grapes	At least 70% organic grapes	At least 95% organic grapes	100% organic grapes	State	State Totals	
	1				1			1		1				MN		
		1			1			1					1	MN		
	1				1			1		1				MN		
	1				1		1			1				IL		
	1				1		1						1	PA		
	1				1			1		1				MN		
	1		1				1			1				MN		
	1			1			1			1				NY		
1			1				1			1				MN		
	1				1		1			1				MN		
1				1			1						1	MN		
	1			1			1			1				MN		
	1			1			1				1			MN		
	1			1				1		1				MN		
1				1			1						1	MN		
	1				1			1		1				NY		
	1			1				1		1				MN		
	1				1		1						1	NC		
	1			1				1		1				MN		
	1				1		1			1				NY		
	1				1			1		1				MN		
	1				1		1					1		MN		
1				1			1				1			MN		
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	1					1		1			1			MN		
	1				1			1					1	MN		
	1			1				1					1	MN		
	1			1				1					1	MN		
1				1				1			1			MN		
	1			1				1				1		MN		
		1	1					1				1		MN		
	1					1	1			1				MN		

How often do you purchase organic food?			How often do you drink wine?				How often do you seek out organic wine?			If you see a wine label that reads "Made with organic grapes", then the wine is made with...				What state do you live in?		
Never	Sometimes	Always	Never	2-3 times a month	2-3 times a week	Daily	Never	Sometimes	Always	At least 50% organic grapes	At least 70% organic grapes	At least 95% organic grapes	100% organic grapes	State	State Totals	
	1				1			1			1			MN		
	1				1		1						1	MN		
	1				1			1					1	MN		
	1				1			1			1			CT		
	1			1				1			1			NC		
	1			1			1					1		VA		
	1				1		1			1				NY		
	1				1		1						1	MN		
	1			1			1					1		MN		
	1			1			1					1		MT		
	1				1			1					1	CO		
		1			1			1		1				VT		
	1			1				1			1			VT		
	1			1			1						1	VT		
	1				1		1						1	CO		
	1				1		1						1	CO		
		1			1			1				1		CO		
	1				1			1		1				VT		
	1				1		1			1				CO		
		1			1			1				1		VT		
		1			1			1			1			VT		
1				1			1			1				IL		
1				1			1					1		IL		
1					1		1						1	IN		
1					1		1						1	IL		
	1			1			1			1				IL		
	1			1				1				1		CO		
	1				1			1			1			VT		
	1					1	1						1	IL		
1				1			1				1			IN		
1						1		1					1	NH		
	1					1	1			1				IL		
	1			1			1					1		IL		
1				1			1						1	IL		
	1			1			1			1				IL		
1				1			1			1				IL		

How often do you purchase organic food?			How often do you drink wine?				How often do you seek out organic wine?			If you see a wine label that reads "Made with organic grapes", then the wine is made with...				What state do you live in?		
Never	Sometimes	Always	Never	2-3 times a month	2-3 times a week	Daily	Never	Sometimes	Always	At least 50% organic grapes	At least 70% organic grapes	At least 95% organic grapes	100% organic grapes	State	State Totals	
	1			1			1			1				IL		
	1				1			1					1	MA		
	1			1			1						1	VT		
	1			1			1						1	IN		
1					1		1						1	IL		
	1				1		1						1	CO		
	1			1			1					1		IN		
	1				1		1			1				IN		
	1				1		1			1				CO		
	1					1	1			1				CO		
		1				1		1					1	VT		
	1			1			1						1	IL		
		1		1			1						1	VT		
	1			1				1					1	IL		
	1			1			1					1		VT		
	1		1					1					1	VT		
1			1				1			1				CO		
	1			1			1						1	CO		
	1				1		1					1		CO		
20	122	21	12	72	69	10	102	58	3	62	21	20	61	Totals		

ATTACHMENT B

Alcohol and Tobacco Tax and Trade Bureau (TTB),
U.S. Department of the Treasury

1. "Information Sheet on New Organic Labeling Policies"
Effective June 2, 2009.
"Labeling Wine Containing Organic and Non-Organic Grapes"
(one page)

2. TTB "Guidelines for Labeling Wine with Organic References"
revised June 2009
(Title Page plus five pages)

Information Sheet on New Organic Labeling Policies

Through a Memorandum of Understanding between the Agricultural Marketing Service (AMS) of the United States Department of Agriculture (USDA) and the Alcohol and Tobacco Tax and Trade Bureau (TTB), TTB has been charged with implementing the organic program on behalf of AMS/USDA. TTB would like to notify the industry that AMS, in the interest of clear disclosure to the consumer, has changed the labeling policies for wines which contain both organic and non-organic grapes.

Labeling Wine Containing Organic and Non-Organic Grapes

Wine labeled with a "Made with Organic Ingredients" statement, and which contains organic and non-organic grapes, must indicate the presence of non-organic grapes in the "Made with Organic..." statement on the label. The following variations to this statement are acceptable:

- "Made with Organic and Non-Organic Grapes";
- "Made with Organic [variety] Grapes and Non-Organic [variety] Grapes";
- "Made with _% Organic Grapes and _% Grapes";
- "Made with _% Organic [variety] Grapes and _% Non-Organic [variety] Grapes"

In addition, wines restricted to an "Organic Ingredients" statement must indicate the presence of any non-organic grapes in the "Organic Ingredients" Statement. An example of such a statement is "Ingredients: Organic Merlot grapes, Cabernet Sauvignon grapes, tartaric acid." As noted below, such a wine will also have to bear a Percentage statement.

Percentage Statements on Wine Restricted to an "Organic Ingredients" Statement

When a wine is restricted to an "Organic Ingredients" statement and contains non-organic ingredients such as in the example above, a Percentage Statement such as "55% Organic Ingredients" must also be present on the label. The Percentage Statement must appear on the information panel in proximity to the "Organic Ingredients" Statement. If a wine bears an "Organic Ingredients" Statement in which no disclosure of non-organic ingredients is made, such as "Ingredients: Organic Grapes," then 100% of the ingredients in such wine must be organic.

However, when 100% of the ingredients are organic on a wine restricted to an "Organic Ingredients" statement, a Percentage Statement is prohibited in order to avoid consumer confusion with products meeting the "100% Organic Wine" standard.

Effective: June 2, 2009

GUIDELINES FOR LABELING

Wine With Organic References

GUIDELINES FOR LABELING WINE AS "100% ORGANIC"

This document contains a sample label. It should be used as guidance relating to the National Organic Program (NOP) regulations at 7 CFR part 205. To view these regulations in their entirety, please visit the United States Department of Agriculture's website at www.ams.usda.gov/nop. This sample complies with the Federal Alcohol Administration Act, the Alcohol Beverage Labeling Act and the NOP.

When labeling your product as "100% Organic," it must contain 100 percent organically produced ingredients and have been processed using organically produced processing aids, not counting added water and salt. You should also consider the following points in designing your label:

BRAND NAME/CLASS & TYPE (OPTIONAL)
The phrase "100% Organic" may be used to modify the brand name and/or class and type statement on the PDP, IP, or OP.

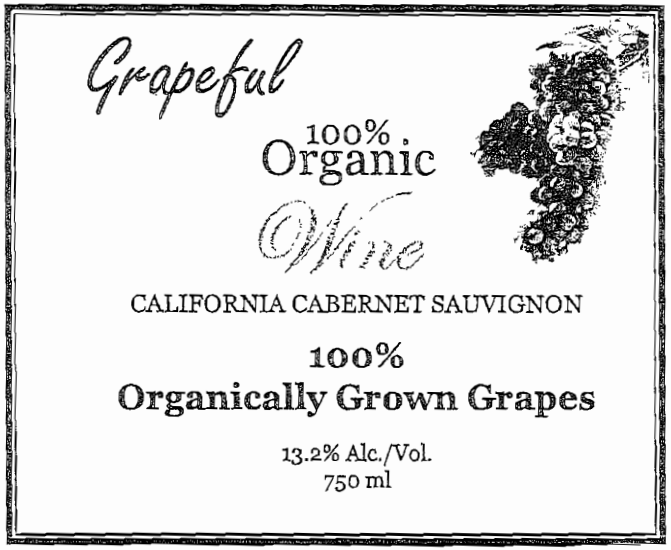
SULFITE STATEMENT
"100% Organic" products cannot use added sulfites in production. Therefore, since no added sulfites are present in the finished product, the label may not require a sulfite statement. In these cases, a lab analysis is necessary to verify that the wine contains less than 10 ppm of sulfites.

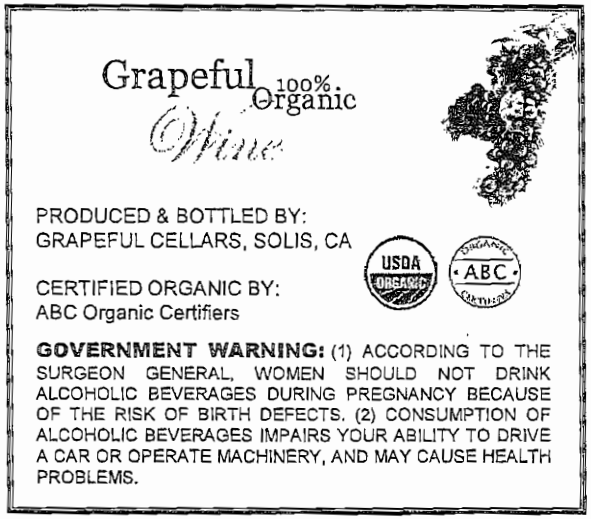
INGREDIENT STATEMENT (OPTIONAL)
Products certified as "100% Organic" may show a complete ingredient statement. The term "organic" may be used to identify the specific ingredients. Water and salt included as ingredients may not be identified as "organic." This statement may only appear on the IP.

CERTIFICATION STATEMENT (REQUIRED)
"Certified Organic by —" or a similar phrase must be listed below the name and address of: the bottler, for domestic wines; or the bottler or importer for imported wines. This statement must be on the IP and may include the agent's business address, telephone number, or internet address.

DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
WASHINGTON, DC 20250

DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU
WASHINGTON, DC 20220





KEY

PDP - (PRINCIPAL DISPLAY PANEL) That part of the label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for sale.

IP - (INFORMATION PANEL) That part of the label of a packaged product that is immediately contiguous to and to the right of the principal display panel as observed by an individual facing the principal display panel, unless another section of the label is designated as the information panel because of package size or other attributes (e.g., irregular shape with one usable surface).

OP - (OTHER PANEL) Any panel other than the principal display panel, information panel, or ingredient statement.

IS - (INGREDIENT STATEMENT) The list of ingredients contained in a product shown in their common and usual names in the descending order of predominance.

USDA ORGANIC SEAL (OPTIONAL)
The USDA Organic Seal may be placed on the label of a product that is certified as "100% Organic." This seal may appear on the PDP, IP or OP.

CERTIFYING AGENT SEAL (OPTIONAL)
The seal of a USDA-accredited certifying agent may be placed on the label of a product that is certified as "100% Organic." This seal may appear on the PDP, IP or OP.

GUIDELINES FOR LABELING WINE AS "ORGANIC"

This document contains a sample label. It should be used as guidance relating to the National Organic Program (NOP) regulations at 7 CFR part 205. To view these regulations in their entirety, please visit the United States Department of Agriculture's website at www.ams.usda.gov/nop. This sample complies with the Federal Alcohol Administration Act, the Alcohol Beverage Labeling Act and the NOP.

When labeling your product as "Organic," it must contain at least 95 percent organically produced ingredients, not counting added water and salt. In addition, your product must not contain added sulfites and may contain up to 5 percent non-organically produced agricultural ingredients allowed by 7 CFR 205.606 (provided your accredited certifying agent has determined the ingredients to be not commercially available in organic form), and/or other substances allowed by 7 CFR 205.605. You should also consider the following points in designing your label:

BRAND NAME/CLASS & TYPE (OPTIONAL)
The term "Organic" may be used to modify the brand name and/or class and type statement on the PDP, IP, or OP.

SULFITE STATEMENT
"Organic" products cannot use added sulfites in production. Therefore, since no added sulfites are present in the finished product, the label may not require a sulfite statement. In these cases, a lab analysis is necessary to verify that the wine contains less than 10 ppm of sulfites.

PERCENTAGE STATEMENT (OPTIONAL)
The phrase "X% Organic" or "X% Organic ingredients" may be included on the labeling. Such statements may appear on the PDP, IP or OP.

INGREDIENT STATEMENT (OPTIONAL)
Products certified as "organic" may show a complete ingredient statement. The term "organic" may be used to identify the specific ingredients. Water and salt included as ingredients may not be identified as "organic." This statement may only appear on the IP.

CERTIFICATION STATEMENT (REQUIRED)
"Certified Organic by —" or a similar phrase must be listed below the name and address of: the bottler, for domestic wines; or the bottler or importer for imported wines. This statement must be on the IP and may include the agent's business address, telephone number, or internet address.

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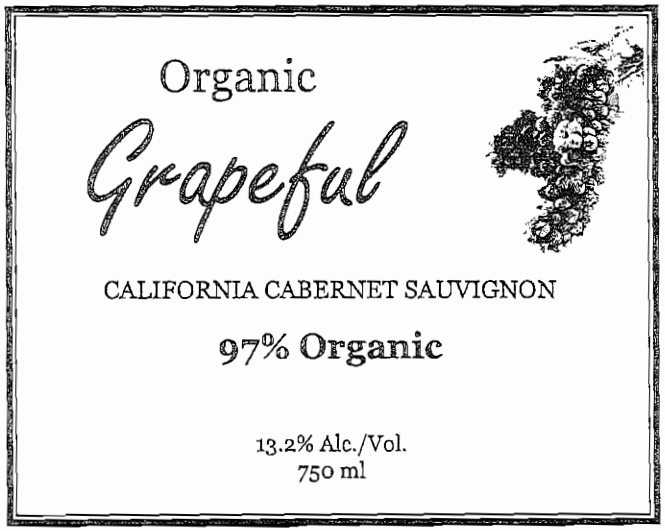
WASHINGTON, DC 20220



KEY

PDP - (PRINCIPAL DISPLAY PANEL) That part of the label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for sale.

IP - (INFORMATION PANEL) That part of the label of a packaged product that is immediately contiguous to and to the right of the principal display panel as observed by an individual facing the principal display panel, unless another section of the label is designated as the information panel because of package size or other attributes (e.g., irregular shape with one usable surface).

OP - (OTHER PANEL) Any panel other than the principal display panel, information panel, or ingredient statement.

IS - (INGREDIENT STATEMENT) The list of ingredients contained in a product shown in their common and usual names in the descending order of predominance.

CERTIFYING AGENT SEAL (OPTIONAL)
The seal of a USDA-accredited certifying agent may be placed on the label of a product that is certified as "organic." This seal may appear on the PDP, IP or OP.

USDA ORGANIC SEAL (OPTIONAL)
The USDA Organic Seal may be placed on the label of a product that is certified as "organic." This seal may appear on the PDP, IP or OP.

GUIDELINES FOR LABELING WINE AS "MADE WITH ORGANIC INGREDIENTS"

This document contains a sample label. It should be used as guidance relating to the National Organic Program (NOP) regulations at 7 CFR part 205. To view these regulations in their entirety, please visit the United States Department of Agriculture's website at www.ams.usda.gov/nop. This sample complies with the Federal Alcohol Administration Act, the Alcohol Beverage Labeling Act and the NOP.

When labeling your product as "Made with Organic Ingredients" (or a similar phrase), it must contain at least 70 percent organically produced ingredients, not counting added water and salt. In addition, wine may contain added sulfites (in accordance with 7 CFR 205.605) and may contain up to 30 percent non-organically produced agricultural ingredients and/or other substances allowed by 7 CFR 205.605. You should also consider the following points in designing your label:

"MADE WITH ORGANIC ---" STATEMENT (OPTIONAL)
The phrase "Made with Organic ---" (specified ingredients or food groups) may be included on the labeling. Such statements may appear on the PDP, IP or OP.

PERCENTAGE STATEMENT (OPTIONAL)
The phrase "X% Organic" or "X% Organic ingredients" may be included on the labeling. Such statements may appear on the PDP, IP or OP.

INGREDIENT STATEMENT (OPTIONAL)
Products certified as "Made with Organic Ingredients" may show a complete ingredient statement. The term "organic" may be used to identify the specific ingredients. Water and salt included as ingredients may not be identified as "organic." This statement may only appear on the IP.

CERTIFICATION STATEMENT (REQUIRED)
"Certified Organic by ---" or a similar phrase must be listed below the name and address of: the bottler, for domestic wines; or the bottler or importer for imported wines. This statement must be on the IP and may include the agent's business address, telephone number, or internet address.

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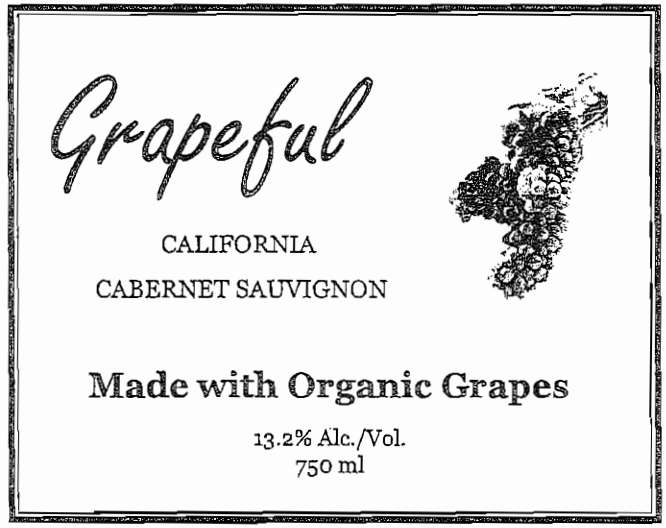
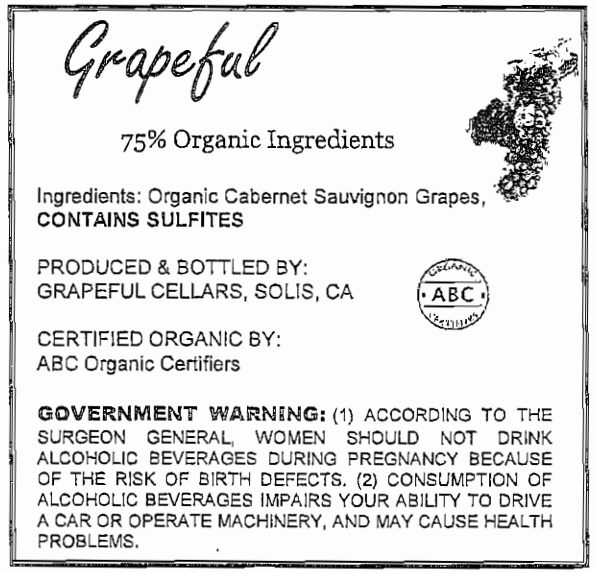
WASHINGTON, DC 20220





KEY

PDP - (PRINCIPAL DISPLAY PANEL) That part of the label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for sale.

IP - (INFORMATION PANEL) That part of the label of a packaged product that is immediately contiguous to and to the right of the principal display panel as observed by an individual facing the principal display panel, unless another section of the label is designated as the information panel because of package size or other attributes (e.g., irregular shape with one usable surface).

OP - (OTHER PANEL) Any panel other than the principal display panel, information panel, or ingredient statement.

IS - (INGREDIENT STATEMENT) The list of ingredients contained in a product shown in their common and usual names in the descending order of predominance.

CERTIFYING AGENT SEAL (OPTIONAL)
The seal of a USDA-accredited certifying agent may be placed on the label of a product that is certified as "Made with Organic Ingredients." This seal may appear on the PDP, IP or OP.

THE LABELS MUST NOT SHOW:

THE USDA ORGANIC SEAL

GUIDELINES FOR LABELING WINE AS "MADE WITH ORGANIC AND NON-ORGANIC INGREDIENTS"

This document contains a sample label. It should be used as guidance relating to the National Organic Program (NOP) regulations at 7 CFR part 205. To view these regulations in their entirety, please visit the United States Department of Agriculture's website at www.ams.usda.gov/nop. This sample complies with the Federal Alcohol Administration Act, the Alcohol Beverage Labeling Act and the NOP.

When labeling your product as "Made with Organic and Non-Organic Ingredients" (or a similar phrase), the label must indicate the presence of non-organic grapes in the "Made with Organic..." statement on the label, and such wine must contain at least 70 percent organically produced ingredients, not counting added water and salt. In addition, wine may contain added sulfites (in accordance with 7 CFR 205.605) and may contain up to 30 percent non-organically produced agricultural ingredients and/or other substances allowed by 7 CFR 205.605. You should also consider the following points in designing your label:

"MADE WITH ORGANIC ---" STATEMENT (OPTIONAL)
The phrase "Made with Organic --- and Non-Organic ---" (specified ingredients or food groups) may be included on the labeling. Such statements may appear on the PDP, IP or OP.

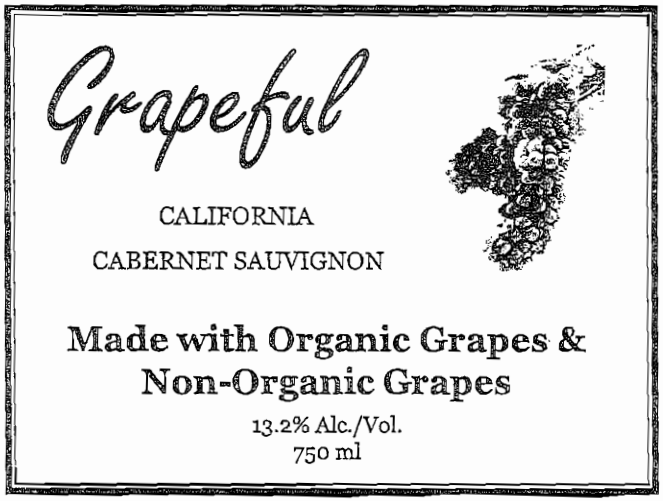
PERCENTAGE STATEMENT (OPTIONAL)
The phrase "X% Organic" or "X% Organic ingredients" may be included on the labeling. Such statements may appear on the PDP, IP or OP.

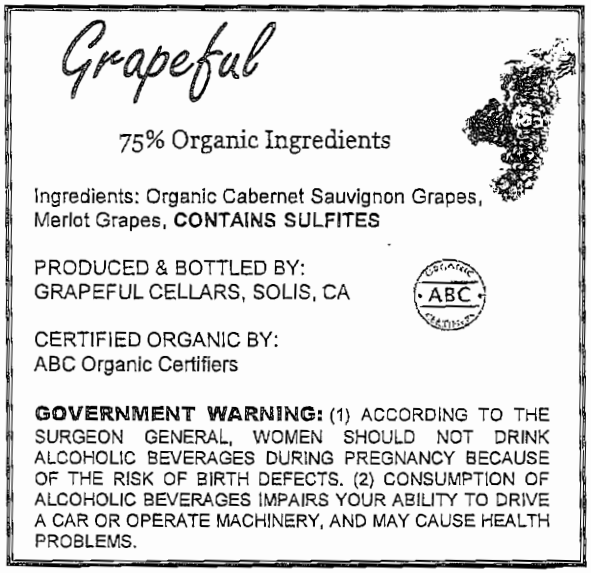
INGREDIENT STATEMENT (OPTIONAL)
Products certified as "Made with Organic Ingredients" may show a complete ingredient statement. The term "organic" may be used to identify the specific ingredients. Water and salt included as ingredients may not be identified as "organic." This statement may only appear on the IP.

CERTIFICATION STATEMENT (REQUIRED)
"Certified Organic by ---" or a similar phrase must be listed below the name and address of: the bottler, for domestic wines; or the bottler or importer for imported wines. This statement must be on the IP and may include the agent's business address, telephone number, or internet address.

DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
WASHINGTON, DC 20250

DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU
WASHINGTON, DC 20220





KEY

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OP - (OTHER PANEL) Any panel other than the principal display panel, information panel, or ingredient statement.

IS - (INGREDIENT STATEMENT) The list of ingredients contained in a product shown in their common and usual names in the descending order of predominance.

CERTIFYING AGENT SEAL (OPTIONAL)
The seal of a USDA-accredited certifying agent may be placed on the label of a product that is certified as "Made with Organic Ingredients." This seal may appear on the PDP, IP or OP.

THE LABELS MUST NOT SHOW:

THE USDA ORGANIC SEAL

GUIDELINES FOR LABELING WINE RESTRICTED TO AN "ORGANIC INGREDIENTS" STATEMENT

This document contains a sample label. It should be used as guidance relating to the National Organic Program (NOP) regulations at 7 CFR part 205. To view these regulations in their entirety, please visit the United States Department of Agriculture's website at www.ams.usda.gov/nop. This sample complies with the Federal Alcohol Administration Act, the Alcohol Beverage Labeling Act and the NOP.

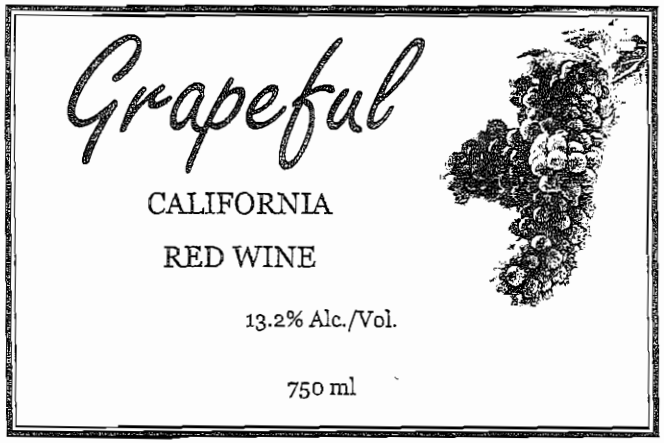
This sample label is applicable to the production of wines by wineries exercising an exemption from certification found at 7 CFR part 205.101(a)(3) or 7 CFR part 205.101 (a)(4). Products exempt from certification may contain less than 70 percent organically produced ingredients, not counting added water and salt. In addition, the product may contain over 30 percent non-organically produced agricultural ingredients and/or other substances without being limited to those in 7 CFR 205.605. The term "organic" shall only appear in an ingredient statement and the accompanying percentage statement. You should also consider the following points in designing your label:

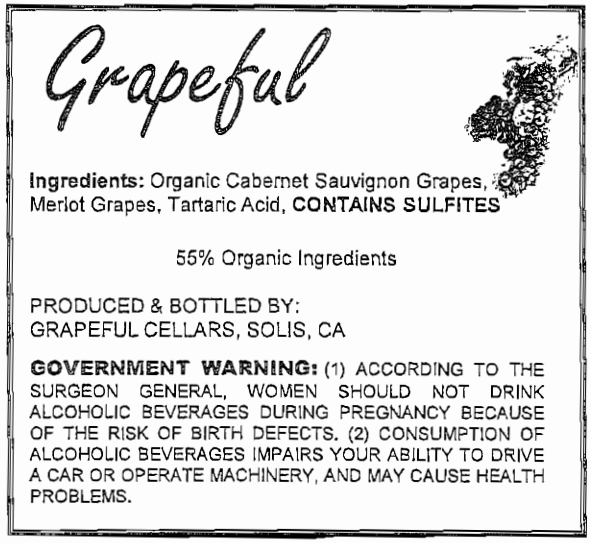
INGREDIENT STATEMENT
Products restricted to an "Organic Ingredients" statement may show a complete ingredient statement. The term "organic" may only be used in an organic ingredient statement to identify the specific ingredients and in the accompanying percentage statement. Water and salt included as ingredients may not be identified as "organic." The ingredient statement may only appear on an IP.

PERCENTAGE STATEMENT
(Organic and Non-Organic Ingredients)
The phrase "X% Organic" or "X% Organic ingredients" must be included on the labeling. The percentage statement may only appear on an IP.

PERCENTAGE STATEMENT
(No Non-Organic Ingredients)
If a wine bears an "Organic Ingredients" Statement in which no disclosure of non-organic ingredients is made, such as "Ingredients: Organic Grapes," then 100% of the ingredients in such wine must be organic.

When 100% of the ingredients are organic on a wine restricted to an "Organic Ingredients" statement, a Percentage Statement is prohibited.





KEY

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OP - (OTHER PANEL) Any panel other than the principal display panel, information panel, or ingredient statement.

IS - (INGREDIENT STATEMENT) The list of ingredients contained in a product shown in their common and usual names in the descending order of predominance.

THE LABELS MUST NOT SHOW:

THE USDA ORGANIC SEAL

THE CERTIFYING AGENT SEAL

A CERTIFICATION STATEMENT

THE TERM "ORGANIC" IN THE ABSENCE OF AN INGREDIENT STATEMENT

DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
WASHINGTON, DC 20250

DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU
WASHINGTON, DC 20220

ATTACHMENT C

Comments Submitted to National Organic Program

August 2005

In Favor of Retaining Sulfur Dioxide for Wine on National List

By Paul Chartrand, President, Chartrand Imports

Katrina Fetzer, CEÂGO Vinegarden

And Dr. Michel Ginoulhac, The Organic Wine Company

Torres, Francine

From:	paul@chartrandimports.com%inter2 [paul@chartrandimports.com] on behalf of paul@chartrandimports.com
Sent:	Tuesday, August 16, 2005 3:12 PM
To:	National List
Subject:	PUBLIC COMMENT-Sunset of National List Substances

Mr. Arthur Neal
Program Administration
USDA National Organic Program
Washington, DC

Dear Mr Neal:

I am writing to offer my Public Comment regarding the sunset of substances currently authorized on the NOP National List which are scheduled to expire on 10/21/07, specifically the use of sulfur dioxide in wine from organic grapes, as provided for on the current National List. I am an importer and wholesaler of wines made from organic grapes and have been for 20 years. Our company, Chartrand Imports, sells both wines from organic grapes made with AND WITHOUT added sulfur dioxide.
In addition, I closely followed and participated in many USDA and NOSB discussions on this substance over the last 15 years.

I firmly believe the current allowance for use of sulfur dioxide in wine from organic grapes is both sufficient and necessary for this segment of the organic foods industry to survive and prosper, and to allow the largest segment of US customers to obtain and enjoy wines made with organic grapes. This growth encourages more farming of organic grapes and more acreage under organic production, which is the goal of the OFPA.

The reasons for this usage today are the same reasons that USDA allowed sulfur dioxide on the current National List and why Congress even amended the OFPA in order to clarify that this substance would be allowed despite a seeming contradiction in the original OFPA text.
There has been no other substance identified, organic or synthetic, that eliminates the threat of oxidation and bacterial spoilage in wines once they are bottled. Sulfur in some form has been used as a cleansing and processing additive in winemaking for over 100 years and may indeed have been used for several centuries. It is essentially a natural additive and does no harm to the earth or humans, unless they are allergic to sulfur. Thus sulfur dioxide continues to meet the criteria for placing a substance on the National List.

Although some wines from organic grapes are made without added sulfur, the majority of wines from organic grapes continue to utilize this substance to preserve varietal aromas and stability. The wines made without added sulfur dioxide are more fragile and often disappointing to customers and critics in the wine community. This burden has inhibited acceptance of all wines from organic grapes. Years of effort to produce and market clean, stable and correct wines from organic grapes, using added sulfur dioxide, have led to the current state of growth in such wines. In addition, a greater variety of wines from organic grapes, now available through the use of sulfur dioxide, has led to a much greater acceptance of such wines in the marketplace. This has led to more acres of organic grapes and more customers who look for such wines. Indeed, virtually ALL imported wines from organic grapes contain added sulfur dioxide as this ingredient is used throughout Europe and other wine producing countries in wines from organic grapes.

If the use of sulfur dioxide is terminated in wines from organic grapes, this industry will take a giant step backward. Many, many labels of currently enjoyed wines will not be allowed to state that they contain organic grapes. And many of these wines will stop using organic grapes since they will not be permitted to tell the public anything about

the organic grapes which make up 99.99% of the end product. These wines do not currently use the term "organic wine" and we are not asking for this step. To simply continue to tell the public that such wines do indeed contain certified organic grapes is all that the industry requests by continuing to place sulfur dioxide on the National List.

No replacement has been found, the ingredient still meets the criteria for the National List, and the organic wine grape industry has grown considerably through the widespread availability and sale of both wines with and without added sulfur dioxide. Please contact me if you have any questions in this matter.

Sincerely,

Paul Chartrand, President

Chartrand Imports
Phone: 207-594-7300 Fax: 207-594-8098
email: paul@chartrandimports.com website: www.chartrandimports.com

CEAGO
VINEGARDEN

Docket Number TM-0407

August 12, 2005

Mr. Arthur Neal
Director, Program Administration
National Organic Program
USDA-AMS-TMP-NOP
1400 Independence Ave, SW
Room 4008-So. Ag Stop 0268
Washington, DC 20250

RE: Continued Placement of SO2 on NOP National List

Dear Mr. Neal;

I am writing in regards to comment on the continued placement of Sulfur Dioxide on the NOP National List. We, Ceago Vinegarden, strongly supports having Sulfur Dioxide kept on the NOP National List. We make wine from estate grown certified Organic and Biodynamic grapes and hold Organic certification in our processing. We currently label our wine "made with Organic Grapes" and all wines are under a total of 100 ppm total sulfite level. We feel it is very important for Organic wine grape growers like ourselves to continue to use Sulfur Dioxide in our winemaking to preserve the quality of the product that we are selling to our customers. We do not feel comfortable at this point without the addition of sulfur dioxide. Without Sulfur Dioxide, we would risk that the wine would be spoiled or tainted from no preservative. We are open to looking for alternatives that could replace sulfur dioxide. We also feel it is important to keep the use of Sulfur Dioxide on the NOP National List because it allows consumers to understand the way that we farm without trying to hide anything from them. By using the terms on the label "made with Organic Grapes" and "contains sulfites" we are letting the customer know how we farm while having the amount of sulfur dioxide controlled.

We believe that selling a quality product that will be the same from when it leaves our hands to when the consumer purchases the product is very important. Keeping Sulfur Dioxide on this list will continue this process while allowing certified Organic framers, like ourselves, to show the quality of the grapes without having them spoil.

Thank you for you consideration of our comments. If you have any questions, please feel free to contact me at any time.

Best wishes,

Katrina Fetzer
Director of Marketing, Public Relations & Hospitality

P.O. Box 3017
5115 East Highway 20
Nice, CA 95464
707.274.1462 · fax 707.274.9736

www.ceago.com

Torres, Francine

From: michel@theorganicwinecompany.com%inter2 [michel@theorganicwinecompany.com] on behalf of michel@theorganicwinecompany.com
Sent: Tuesday, August 16, 2005 4:13 PM
To: National List
Subject: FW: Sunsetting of Sulfur Dioxide on National List
Attachments: ATTACHMENT.TXT

Mr. Arthur Neal
Program Administration
USDA National Organic Program
Washington, DC

Dear Mr Neal:

I am writing to express the opinion of The Organic Wine Company as regards the continued use of Sulfur Dioxide in wines made from organic grapes. The Organic Wine Company was the first company to import and distribute such wines in the US 25 years ago. I have been personally in charge of the management of our family winery in France for many years. As such I have a direct experience of making wines from the ground up. Moreover, as a physician, I have always sought to reduce to a minimum the use of sulfur dioxide in my wines. Our property was among the pioneers of the organic movement more than 30 years ago.

On the other hand, as a wine consultant in charge of selecting wines for importation, I have been in touch with numerous wineries and winemakers, all grappling with the same desire to reduce this preservative.

In spite of all attempts in that direction it is nevertheless clear that Sulfur dioxide has remained to this day the only viable and reliable way to ensure a lasting quality to any wine, notwithstanding the techniques used to grow the grapes. Apart from a handful of wineries who can justify taking the risk to make wines without added sulfites by their small production or the control they have over the distribution (with the consequence of a much higher cost to the consumer) the vast majority of the organic winemakers will keep using for the predictable future the same low dosages of added sulfites to make sure their products are representative of their efforts and have not lost their essential qualities before they arrive in the consumer's glass.

There is no reasonable alternative at the present time to the continued use of sulfur dioxide in winemaking around the globe. Everybody will be glad to adopt another technique or product, if better in any way, when it shows up and we are encouraging all winemakers to keep experimenting. In the meantime however, we wholeheartedly support the renewal of the inscription of sulfur dioxide on the NOP National List of allowed ingredients for the processing of wines made with organic grapes.

Michel Ginoulhac, M.D.
Wine Selection
The Organic Wine Company
San Francisco, Ca

415-256-8888

michel@theorganicwinecompany.com

ATTACHMENT D

04-05-10 A11:51 IN

Supporting Companies

US Importers

Chartrand Imports, P.O. Box 1319, Rockland, ME 04841

The Organic Wine Company, 1592 Union Street, #350, San Francisco, CA 94123

Natural Merchants LLC, 2001 Foothill Boulevard 2C, Grants Pass, OR 97526

Calypso Organic Selections, 1725 Eye Street NW, Suite 300, Washington, DC 20006

Pleasant Importers, Inc., 654 Tiffany St, Bronx, NY 10474

Maison Jomere Organic Spirits Company, 18 Danville Road, Plaistow, NH 03865

Cordova Import and Export, 16000 Moss Rock Rd., Longmont, CO 80503

Foreign Producers and Exporters to USA

Agricola Santa Teresa S.A, Manuel Rodriguez 229, Isla de Maipo, Chile

La Fortuna S.A., Casilla 19, Lontué, Chile

La Riojana Cooperativa, La Plata 646, Chilecito, Argentina

Azienda Agricola Giol, V.le della Repubblica 2, 31020 San Polo di Piave (TV), Italy

Albet i Noya, Sant Pau d'Ordal, ES-08739, Barcelona, Spain

Bodegas Pinord, S.A., Doctor Pasteur, 6, 08720 Vilcafranca del Penedes, Spain

Az. Agr. Chiusa Grande, C.da Casali, Nocciano (PE), Italy

Richmond Plains Wines, 108 McShane Road , Nelson, New Zealand

Cascina Zerbetta, Strada Bozzola,11, 15044 Quargnento (AL), Italy

Château Richard, 24240 Monestier, France

Export Robin, Ctra. de Pamplona, 26006 Logorño, La Rioja, Spain

ATTACHMENT D

Supporting Companies (continued)

US Distributors

Natural-State Wines, 7038 Worthington Galena Rd, Worthington, OH 43085

Owl's Nest Trading Company, 351 Franklin Street,, Petersburg, VA 23803-3351

Wine Cru Colorado, 14704 E 33Rd Pl #C, Aurora, CO 80011

National Wine and Spirits–Indiana, PO Box 1602, Indianapolis, IN 46206

Winegardner's Wines, 342 Gallatin Park Drive, Bozeman, MT 59715

Flathead Beverage Co, 1380 Hwy 2 W, Kalispell, MT 59901

Fiasco Fine Wine, 20 Bisbee Court, Santa Fe, NM 87508

US Wine and Spirits Manufacturers

Altitude Spirits, PO BOX 1437, Boulder, CO 80306

3 Horse Ranch Vineyards, 5900 Pearl Road , Eagle, ID 83616

Upslope Brewing Co, 1501 Lee Hill Rd., Boulder, CO, 80304

Little Big Brewing, 988 Second Street, Berthoud, CO, 80513

US Retailers

Good Earth Natural Foods, 1966 Sir Francis Drake Boulevard, Fairfax, CA

Nature's Food Patch Natural Market, 1225 Cleveland St., Clearwater, FL 33755

Health Food House, 4206 North Ben Jordan Street, Victoria, Texas 77901-3076

The Wine House, 217 Pine St, Sheboygan Falls, WI 53085

ATTACHMENT D

Supporting Companies (continued)

US Publication

Organic Wine Journal, 230 West 55th Street, Suite 29D, New York, NY 10019

Foreign Importer

Vintage Roots, Ltd., Holdshott Farm, Reading Road, Hants, RG27 0JZ, United Kingdom

ATTACHMENT D

Supporting Individuals

(Affiliations Listed for Identification Purposes Only)

U.S. Representative Jared Polis, 2nd District, Colorado

Dave Carter, NOSB member 2001-2006, Crystal Springs Consulting, Broomfield, CO

Bob Scowcroft, Santa Cruz, CA

Alan Greene, MD, Member, Board of Directors, The Organic Center, Boulder CO

Hass Hassan, Greenmont Capital Partners, Boulder, CO

Paul Repetto, Greenmont Capital Partners, Boulder, CO

Diane Muszkynski, Nature's Best, Brea, CA

Rusty Eddy, Founder, Organic Grapes Into Wine Alliance, San Francisco, CA

Woody Tasch, Slow Money, Brookline, MA

Janie Hoffman, Slow Money, Brookline, MA

Eugene Windom, Omnisource DDS, No. Hollywood, CA

Daniel Birshan, California Custom Flavors, Irwindale, CA

Marie Wallace, LifeSource, Chicago, IL

Jacqui Dietrich, Deming Center, Boulder, CO

Michael Joseph, Mile High Organics, Boulder, CO

Rudy Machas, Montinore Estate, Forest Grove, OR

Tom Aarts, Nutrition Capital Network, San Diego, CA

Cindi Yaklich, EpiCenter Creative, Boulder, CO

John Maggio, Clementine Arts, Boulder, CO

Betsy Hitchcock, Hitchcock Design, Boulder, CO

Robert Bakker, Metabolic Research, Las Vegas, NV

ATTACHMENT D

Supporting Individuals (continued)

(Affiliations Listed for Identification Purposes Only)

Steve Fredrich, Savannah's Restaurant, Huntington, WV

K. Neusteter, Innovision Health Media, Boulder, CO

Megan Yost, New Hope Natural Media, Boulder, CO

Rebecca Cohen, Natural Value, San Francisco, CA

Janet Huntaner, Empowerment Therapies, Ben Lomond, CA

Sarah Valley, Jackson Whole Grocer, Jackson, WY

Russell Rudermer, Island Naturals, Hilo, HI

Keith Gelbert, Zambezi Organic Forest Honey Donnelly, Alberta, Canada

Xavier Baker, Clean Green Trading Co., Felton, CA

Simon Mellor, Flake Nation LLC., Venice, CA

Richard A. Merriam, GCI Nutrients, Foster City, CA

Mark Schneider, Health Designs, Elkhart, IN

Laurie Rostad, The Organic Wine Company, San Francisco, CA

Robert Bauer, Tree of Life, St. Augustine, FL

Ana Newa, Neways Healing Center and Day Spa, Puerto Vallarta, Mexico

TJ Miller, Graphic Jam, Lakewood Ranch, FL

Ramsay Ravenel, Grantham Foundation, Boston, MA

Kevin Brussell, University of New Hampshire, Dairy Nutrition Research Center, Durham, NH

Kelly R. Duffield, Duffield Law Firm PC, Boulder, CO

Alison Walker, Environmental Education Providers of Miami-Dade County, Miami, FL

ATTACHMENT D

Supporting Individuals (continued)

(Affiliations Listed for Identification Purposes Only)

Kelly Christina Sparks, GIS Training Source, Inc., Colorado Springs, CO

Sarah Jane Kidd, Fertile Ground Integrated Wellness Center, Denver, CO

Jill Adams, Classical 5 Element Acupuncture, 312 East 7th Avenue, Denver, CO

Katrina Windsor, Creating Thunder, Boulder, CO

Christine Farrell-Riley MD, Heavenly Massage, Quincy, MA

Reuben Rich, Jasper Parts, Wilsonville, OR

Roberto Ricci, Brooklyn, NY

Mollie Fair, Mt. Pleasant, SC

Patrizia Bonetti, Brooklyn, NY

Ludovica Bonetti, New York, NY

Bret Shulman, Hackensack, NJ

Charles D. Ravenel, Charleston, SC

KC Guarascio, Boulder, CO

Tim Overly, Boulder, CO

Marcus Christopher, Boulder, CO

Dale Kambiyashi, Boulder, CO

Vickie Lepore, Sylva, NC

Emily Miller, Boulder, CO

Geoff Smith, Napa, CA

Stacy H. Lesartre, Fort Collins, CO

ATTACHMENT D

Supporting Individuals (continued)

(Affiliations Listed for Identification Purposes Only)

Adrian Smith, San Francisco, CA

Marina Galesi, New York, NY

William Holicky, Boulder, CO

Jerry Manning, Denver, CO

Colleen Arnold, Boulder, CO