

Controversy Erupts Over Label Laws



© G3 Enterprises | *Haulers tirelessly move grapes by the ton across California.*

When is California wine not California wine? And can you trust what it says on the label?

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In the complicated 85 years since Prohibition was repealed the US, the Alcohol and Tobacco Tax and Trade Bureau (TTB) has tried to consistently regulate wine sales in what are effectively 50 different markets with very different needs.

California grapegrowers have long sold their fruit both in and out of state. However, in a complicated turn of events how the resulting wine made from that fruit is labeled has been legally dependent on whether that wine was only sold in the state where it was produced or outside of it as well.

A legal loophole, called note No. 160 or 160B, was recently breached by a non-California winery and its legality is being called into question. This loophole – prior to this rift – allowed producers outside of [California](#) to label wines made from California fruit with California AVAs. They were legally able to do so by requesting an exemption to a certificate of label approval.

The non-California wineries making use of this label exemption weren't bound to the same legal restrictions as California wineries. At the same time non-California

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wineries – who requested certificate of label approval waivers to sell their wines outside of the state in which they were produced – were obliged to just put a generic country or simply "[American](#) appellation" on their wines.

Since the legal breach of note 160, a battle royal has broken out between growers and producers as to what represents transparency in labeling, what their rights are and how "Brand California", may be compromised by this loophole. The discussion has brought to the forefront issues such as are grapes harmed in transit, is fermentation and wine production different when conducted outside of California and if non-California wine makers have the same ability to make quality wine.



© Wine-Searcher | *Robert Tobiassen (left) and John Hinman (right) offer their views*

A legal perspective

The discussion at hand is really about grapes more than wine and how American legal institutions track their journey from the field into the wine bottle. The TTB closed its period for comments on 160 on January 9, 2018.

According to John Hinman, a partner in the San Francisco-based, alcoholic beverage law-focused firm of Hinman & Carmichael, 160 "is not a loophole. The purpose is to identify the source of the grapes that go into the wine, wherever the wine is made." He added that the TTB will likely take a period of months to review comments and decide how to move forward. A TTB spokesperson also confirmed that the process is likely to take a couple of months.

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With the current status of the legal loophole, producers using Napa Valley – and other widely known appellations' – fruit are not subject to the same labeling rules as [Napa Valley](#) producers, which is the crux of the legal discussion, according to Robert Tobiassen, a Virginia-based attorney who consults on regulatory issues who was chief counsel at the TTB from 2003 to 2012.

The concerns expressed, by both growers and producers on both coasts, represent their not-always-in-synch commitment to consistent labeling laws. "This is an industry-proposed change," clarifies Hinman. He expects that the "outcome will be a compromise that permits identification of the source of the fruit on the back label but not on the front."

According to Tobiassen three key points have converged in this case. They are the fact that wines produced and bottled outside of the state where their fruit is from using the exception addressed by 160 conveyed inaccurate information; correspondence received by the TTB from 51 members of the US Senate and the House asserting that consumers "were not receiving truthful and accurate information about their wine;" and the fact that the TTB needs to resolve the meaning of wine label information.

He sites an example of how labeling can be inaccurate given the current legal loophole. If [Tempranillo](#) grapes from the California AVA of [Clarksburg](#) were used to make wines in Indiana two groups would stand to benefit. "The wineries purchasing the grapes are able to use a known appellation to market their wines to consumers and, in some cases, purchase grapes that are not available locally... Second, the grape growers benefit because there is a more widespread market for their grapes which [...] should result in a higher price per ton."

Those benefit from the certificate-exemption "loophole are wineries that use it to unfairly compete against those that are complying with all federal labeling and record keeping requirements", concurred Tracy Genesen, general counsel at the San Francisco-based Wine Institute, which represents more than 1000 California wineries.

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"AVAs are indicators of wine origin," adds Rex Stults, the government relations director at the Napa Valley Vintners Association, which represents more than 500 producers within the region. He adds that "consumers, wineries and grape growers all benefit from efforts to protect AVA names... [and] a level playing field should be applied to everyone and that the loophole in the rules should not favor a very small number of out-of-state producers with no tie whatsoever to the AVA."

A growers' perspective

Grap growers in lesser-known areas of California, such as warmer areas like [Suisun Valley](#) and Clarksburg, who have long sold wine grapes want to maintain the profitability of their fresh fruit market. Few growers would go on the record, but Roger King, the owner of King Estates and the president of Suisun Valley Vintners & Growers Association, said that out-of-state sales are significantly more profitable. He adds that they account for approximately half of his sales and those of many other producers.

He adds that the request for California fruit has been on the rise by out-of-state wineries, noting that Brooklyn Winery in New York City – which did not respond to interview requests for this story – received four truckloads of fruit shipped from his estate to their winery in 2017, which was four times as much as what was purchased by them in 2016.

He adds that producers in other states have managed to carve out a brand for grapes from regions like Suisun and Lodi that resonates more with consumers than it does on growers' home turf of California. He adds that while he has no issue with the Napa Valley having "branding status for their product. But we are opposed to them destroying a market we have built," based on selling Suisun Valley fruit.

Bruce Fry, president of the Lodi-based Fry & Sons, is a fifth-generation, California grape farmer, whose family's roots go back to 1855. He says that when fruit is transported in refrigerated trucks the grapes are not damaged, a fact that is ironically evident from the amount of intra-state shipping that has gone on with grapes, and other types of fruit, within California for years.

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Fry wrote a note to the TTB in January stating that "for the past 25 years growers have spent over \$30 million marketing the Lodi name, grapes, wine and area". The revised 160B "would economically hurt our efforts here in Lodi". He added that one of his goals is "to have out-of-state wineries come to California and Lodi to buy our fruit and put Lodi on the label." He continued that if other AVAs are concerned about this practice they should "create their county ordinance to control their fruits and AVAs", and not burden other AVAs, counties or states.

The Sacramento-based California Organization of Wine Grape Growers (CAWG) has also shown its support of the current way that grapes are sourced and labeled and that they are an important source of income for growers. "There are a number of acclaimed wineries throughout the US that make good wines from California fruit," said John Aguirre, president of the CAWG. "We are neutral about the current system of AVAs," he concluded.

The bottom line is that it is not clear what type of labeling US consumers would benefit from most, regardless of what different factions of the trade desire. Wine consumers need "to be able to know exactly what a label claim means. There must be a common and understood standard," concludes Tobiassen. That is a train of logic with which it is hard to disagree.