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# TEXAS REGISTER

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*Angel Banda  
6th Grade*



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## Texas Department of Agriculture

### Notice of Opportunity for Comment on Petition for Rulemaking and Draft Proposed Amendments

The Texas Department of Agriculture (department) received a Petition for Rulemaking from Mr. Andrew Chalk of Plano, Texas, submitted in accordance with 4 TAC Chapter 1, Subchapter A, §1.4. Accordingly, the department seeks public comments to determine whether or not to amend its rule based on this petitioner's proposed amendment to Chapter 17, Subchapter C, §17.52, concerning use of the GO TEXAN certification mark. Mr. Chalk, a concerned citizen, requests that the department amend §17.52(b)(3), regarding the use of the GO TEXAN certification mark on Texas wine to require that for the department's "Go Texan" mark to be applied to any wine, 100 percent of the grapes used to make that wine must have been grown in the State of Texas. The italicized text included following this paragraph is Mr. Chalk's petition, as submitted. Clarifying factual information provided by the Department of Agriculture regarding the proposal's potential impacts to the GO TEXAN program and its members follows Mr. Chalk's petition. The department believes that the concept proposed warrants consideration by the public, and is, therefore, seeking public comment on the concept and draft proposed rule change as a step towards the possible initiation of formal rulemaking. These comments are necessary in determining whether or not changes are needed, and would serve as the basis for developing any necessary amendments to the rule.

#### Mr. Chalk's petition is as follows:

#### *REQUEST FOR A RULE CHANGE BY THE TEXAS DEPARTMENT OF AGRICULTURE*

To: Commissioner Todd Staples

Texas Department of Agriculture

1700 N. Congress, 11th Floor

Austin, TX 78701

From: Andrew J. Chalk, Editor - CraveDFW

7000 Independence Pkwy., Ste 160-227

Plano, TX 75025

(214) 597-4659

Date: October 27th, 2013

The text below is numbered according to the section of the Texas Administrative Code ("TAC"), to which it is responsive,

3. **BRIEF EXPLANATION OF THE PROPOSED RULE.** To require that for the Texas Department of Agriculture (TDA) "Go Texan" mark to be applied to any wine, 100% of the grapes used to make that wine must have been grown in the State of Texas.

4. **PRECISE TEXT OF THE PROPOSED RULE.** Change TAC, Title 4, Part 1, Chapter 17, Subchapter C, Rule 17.52(b)(3) to read as follows:

(3) wine that is produced in Texas entirely from grapes grown in Texas.

5. **REASONS OR POLICY FOR THE PROPOSED RULE.** The current rule allows for products "processed" in Texas to carry the Go Texas mark. The relevant portion of TAC, Title 4, Part 1, Chapter 17, Subchapter C, Rule 17.52 is as follows:

(b) Unless permission is otherwise granted by the department, the GO TEXAN certification mark may only be used by registrants to certify and promote the following Texas products:

. . . (3) wine which is produced or processed in Texas, as defined in §17.51 of this chapter (relating to Definitions);

There are two reasons for the proposed rule change:

1) This corrects the current state of affairs under which the "Go Texan" mark may be used on wine produced elsewhere by simply claiming that it was "processed" in Texas. The vineyard's location defines a wine's character and quality as much as the grape variety, (it is the basis of the United States American Viticultural Area, AVA, system). By allowing out of state grape and wine producers to label their product with the "Go Texan" mark, renders the mark both misleading to consumers and damage to Texas wineries and grape growers. The current rule also provides an unfair advantage to out of state grape producers, which often grow huge volumes of grapes by allowing those out of state producers to dump excess product in Texas under the "Go Texan" mark. This practice, allowed under the current rule is both misleading to Texas Consumers and damaging to Texas wineries and Texas grape growers.

2) If the "Go Texan" mark required 100% Texas grapes it would be a reliable indication to the consumer of the source and quality of the grapes used in the product. Currently in Texas, each wine producer must place this information on their bottle using their own form of words and their own placement. Making the "Go Texan" mark a reliable indication of the source and quality of the grapes used in the wine will lead to an increase in demand for "Go Texan" mark wines. Globally mature wine producing areas have developed a system of indicating geographical purity for their best wines. For example, labeling an Italian wine 'Brunello' implies that 100% of the grapes were from the Brunello designated wine growing area in Italy (DOCG). With Texas now becoming a mature wine making area the advantages of the 'gold ring' mark can be realized here too.

6. **STATUTORY OR OTHER AUTHORITY FOR THE PROPOSED RULE.** The Texas Department of Agriculture is charged with establishing rules for the "Go Texan" program under V. T. C. A., Agriculture Code §46.012,

7. **APPLICABLE FISCAL INFORMATION CONCERNING THE RULE'S IMPACT UPON STATE AND LOCAL GOVERNMENT, IF ADOPTED, SEPARATELY STATED FOR THE FIRST FIVE YEARS OF THE RULE'S OPERATION.** Under the proposed rule change, consumers armed with a more reliable indicator of the source and quality of the grapes used in the wine would likely purchase a larger proportion of truly Texan wines. These would translate into sales at Texas wineries and Texas vineyards (vs. out-of-state or foreign sales) augmenting existing state and local tax revenue contributions (In 2011 these were \$92.6m). Further, the disadvantage to Texas wineries and

grape growers from out of state producers diluting the Texas market with wines misleadingly labeled as "Go Texan" would be eliminated.

**8. GIVE THE PUBLIC BENEFIT TO BE EXPECTED FROM THE PROPOSED RULE DURING THE FIRST FIVE YEARS OF ITS OPERATION**

*Vineyard acreage: This grew 33% between 2009 and 2011, or roughly 16% per year. Under the 100% rule we would expect to see further large growth for the following reasons:*

a) *Current Go Texan import wines and wines made in Texas from out of state grapes will be replaced with true Texas wine;*

b) *Currently, Federal regulations require a wine labeled as a state product must be made from a minimum of 75% of that state's grapes. As consumers are provided with more meaningful "Go Texan" label, which would require 100% of the grapes to be from Texas growers, there should be an increase in volume in the Texan wines using 100% Texas grapes in order to take advantage of the reliability of the mark. Even assuming no additional sales of Texas labeled wines, based on the new reliable mark, if all Texan wines are assumed to be currently at the Federal 75% minimum and decide to move to 100% then to increase that proportion to 100% Texas grown grapes would require production to increase by a similar margin. Based on 2011 data, that could increase grape production in Texas by approximately 1450 acres. A twenty five percent expansion of case output translates into an annual economic impact of over \$375,000,000.*

c) *The largest effect in the long term would be the increase in public demand for true Texas wines. While difficult to quantify, total cases sold increased from 2005 to 2011 by approx. 7% a year, indicating the industry's capacity to produce if the demand is present. Using data from other states illustrates the potential jump in sales of Texas wine with a meaningful made in Texas mark. The data show that a larger percentage of California wine consumers regularly drink California wine and Oregon consumers regularly drink Oregon wine than Texas wine drinkers regularly consume Texas wine. If Texas could raise this figure closer to the levels in those other states, and we assume that "regularly" means that just 20% of a consumer's wine purchases are from Texas, then Texas wine sales would increase by orders of magnitude.*

**9. GIVE THE PROBABLE ECONOMIC COST TO PERSONS REQUIRED TO COMPLY WITH THE RULE DURING THE FIRST FIVE YEARS OF THE RULE'S OPERATION.** *The cost to Texas producers and growers, if any, would be offset by additional consumption brought about by a meaningful Go Texas mark. Other than Go Texan membership dues that they would otherwise not have paid. These dues would be more than offset by the newly acquired credibility of the program evidenced in wine sales*

**The department's clarifying comments are as follows:**

Only wineries operating within the state of Texas may join the GO TEXAN program and use the GO TEXAN mark under current rules. In 2013, approximately one-third of all Texas wineries were GO TEXAN members. By law, any costs associated with the GO TEXAN program must be borne by GO TEXAN members. The department anticipates Mr. Chalk's proposed rule will result in increased costs to the program associated with: (1) enforcing the use of the mark only on wines meeting the petitioner's more narrow proposed qualifications; (2) dedicating resources toward marketing the different standard for GO TEXAN wine (as opposed to other commodities); and (3) loss of current and potential members in the GO TEXAN program. The department has also determined that, in order to educate the public effectively and increase sales as the petitioner contends, significant marketing expenditures are needed. Texas consumers would need to be educated on this change because other GO TEXAN commodities may qualify for certification

based on creating jobs and economic impact in Texas by activities such as processing in Texas and do not require 100% Texas sourcing. Additionally, less than 25 of the 80 plus GO TEXAN member wineries consistently use the GO TEXAN certification mark on their labels. This means an additional cost to the state would be incurred from fewer wineries in Texas being eligible for the GO TEXAN program while the amended section is in effect, thus decreasing membership revenue for a program required by law to become a cost recovery program.

Mr. Chalk bases his economic impact predictions on a presumption that 75 percent of Texas wines are today produced from Texas grown grapes and that this rule change would result in 100 percent of Texas wines being produced from Texas grapes. The numbers do not support this presumption. In actuality, of the wine bottled each year in Texas, only 18.5 percent comes from Texas grown grapes. This is limited entirely by the grape production capacity of Texas and it is incorrect to assume that this proposal would cause all Texas winemakers to convert their production to be from 100 percent Texas grown grapes. Because the demand for the limited supply of Texas grapes will increase, and the supply will not be able to catch up for several years (it takes 3-5 years for grape acreage to reach full production), costs will greatly increase to individuals, micro-businesses and small businesses producing and purchasing Texas wine as a result of the amended section as set out in Mr. Chalk's proposal. Considering less than a quarter of all GO TEXAN member wineries report using 100 percent Texas grapes in their wines, these rule changes have the potential to significantly increase the cost of production for Texas wine while driving down the number of wineries producing that wine and greatly diminishing the GO TEXAN program's only revenue source - it's members. Additionally, for the GO TEXAN program to survive with fewer members, those members would face drastically increased membership fees should this change take effect.

The department has determined that for the first five years the amended section is in effect, the public will not benefit due to confusion relating to a new GO TEXAN wine standard versus the federal wine labeling regulations stipulating wine is legally 'Texas wine' if 75+% of the grapes are from Texas/Texas American Viticultural Areas. The amended section will confuse the two certifications.

This change would drastically change the intent of the GO TEXAN program. The intent of the GO TEXAN program is, and has always been, to encourage consumer purchases of products that will result in positive economic impact to the Texas economy due to various characteristics of the product. For a product to qualify for certification, it must be grown, processed, manufactured or otherwise value-added in the state. With regard to wine, it must undergo processing in the state to merit the GO TEXAN mark. The amended section would require GO TEXAN wine to be processed and produced entirely from grapes grown in Texas, which discounts the winemaker's contribution to the wine making process and end result, which the department knows is in fact a critical component.

The department requests public comments related to Mr. Chalk's petition to amend §17.52(b)(3) in order to assist the department in its determination of whether or not the amendment should be adopted. Comments on the amendment may be submitted to Mr. Bryan Daniel, chief administrator for trade and business development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of this notice in the *Texas Register*.

TRD-201306111  
Dolores Alvarado Hibbs  
General Counsel  
Texas Department of Agriculture  
Filed: December 30, 2013