

# WHAT'S IN A NAME:

## NAVIGATING THE FEDERAL REGULATIONS GOVERNING THE USE OF TERMS SUCH AS “ORGANIC,” “BIODYNAMIC” OR “SUSTAINABLE” ON ALCOHOL BEVERAGE LABELS



By  
Richard M. Blau, *Chair*  
*GrayRobinson's Alcohol Industry Team*

Consumers across America are expressing unprecedented interest in knowing more about how their food and beverages are produced. Organic products and sustainable practices are topline subjects for the purchasing public, as more and more producers compete for customers who will pay higher prices for products that are healthier and more “green” and environmentally friendly.

Any alcohol beverage made in an environmentally responsible manner can be called “green” or “natural” – neither of these terms is defined by federal marketing and advertising regulations. However, in the context of food generally and alcohol beverages specifically, certain other terms are restricted by law in order to protect consumers from confusing or misleading statements.

**Organic:** This term can apply to the agricultural products used to produce an alcohol beverage product. In 2002, the U.S. Department of Agriculture (USDA) implemented the National Organic Program (NOP) to provide a uniform definition for the term “organic”. Certificates of Label Approval (COLAs) issued by TTB for beer, wine and spirit labels that contain "organic" are approved subject to compliance with the Organic Foods Production Act of 1990 and the NOP regulations. Specific federal regulations, promulgated by the USDA through the NOP and adopted by the U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB), prohibit the term “organic” to be used in conjunction with beverages where chemical fertilizers, pesticides, herbicides or genetically modified organisms (GMOs) are used.

Because different products have varying amounts and levels of organic ingredients, TTB has established standards for several categories of labeling that utilize the term “organic.” The four key organic certification standards in the U.S., each of which has its own rules, are:

1. **The “100% Organic” label** and accompanying USDA/NOP seal can be used only when a product is made of 100% organic ingredients;
2. **The use of the term “Organic” on a label** to describe a product, along with use of the USDA/NOP seal, is permitted where the product is made of at least 95% organic ingredients, and contains only naturally occurring sulfites in small quantities (less than 10 parts per million);
3. **The “Made with Organic [Ingredients]” label** is allowed for products that contain at least 70% organic ingredients, and may include sulfites produced from the use of carbon dioxide in the production process so long as the sulfite levels do not exceed 100 parts per million; and
4. **The “Organic Ingredients” label** refers to the lowest category of approval labeling. For these products, the term “organic” can appear only in a food or beverage product’s Ingredient Statement in connection with the listing of organic ingredients in the product.

Each of these standards has specific requirements imposed by TTB regarding the permissible label location and font sizes for using the word “organic” in connection with a product’s label, as well as the required documentation demonstrating that the product’s organic ingredients have been confirmed as organic by an Accredited Certification Agent (ACA). If a COLA application does not comply with USDA organic laws, the labels will be rejected and the TTB will inform the applicant regarding what changes are required to make the label compliant. Any appeal of a TTB rejection based on non-compliance with the NOP criteria for use of the word “organic” is appealable only to the USDA’s Agricultural Marketing Service.

**Biodynamic:** These alcohol beverage products typically (but not necessarily) are organic because biodynamic producers apply a holistic approach agriculture that uses no chemicals, artificial pesticides or GMOs in their ingredients or production processes. Biodynamic practices include timing activities in the grain fields and vineyards to the cycles of the moon, utilization of natural pest-inhibiting practices, and certain methods that appear to be based as much on folk custom as science.

The concept of biodynamic farming was popularized by Austrian philosopher Rudolf Steiner in the 1920s, and are embraced by many top-tier alcohol beverage producers today. Austria’s **Biokult** and Belgium’s **Leireken** breweries, French domaines **Leroy**, **Leflaive** and **Comtes Lafon** in Burgundy, and **Marian Farmhouse Distillery** in California and **Peak Spirits Farm Distillery** in Colorado all employ biodynamic practices to produce beer, wine and spirits that are labeled “biodynamic.” Currently, TTB allows biodynamic claims to appear on a label so long as the producer has the underlying documentation to support such claims.

Several certification resources are available for biodynamic practices and products. For example, **Demeter USA** has been providing Biodynamic® certification services since 1985. The Demeter Farm Standard utilizes the NOP requirements as a base minimum upon which the additional Biodynamic requirements are built; the company’s *Stellar Certification* is currently both NOP and ISO-65 accredited, and was one of the first organic certifiers in the world to achieve both accreditations.

**Sustainable:** The word “sustainable” means that the alcohol beverage product is produced in a manner that allows for healthy future production of grains and/or grapes. Often, sustainable

agricultural and beverage production practices involve preventing soil erosion, avoiding the use of harsh chemicals, responsibly containing and disposing of process waste products and limiting pollution. Sustainability refers to a range of practices that are not only ecologically sound, but also economically viable and socially responsible.

A “sustainable” alcohol beverage product may, or may not, be organic. Likewise, sustainable farmers may farm largely organically or employ some biodynamic practices, but do not adopt complete adherence to one standard or another so that they retain the flexibility to implement what practices work best for their individual operations. For example, some producers may also focus on energy and water conservation; others may emphasize their use of renewable resources. Some third-party agencies, such as the California Sustainable Winegrowing Alliance, offer sustainability certifications for their respective industry segments. A number of regional industry associations are working on developing clearer standards. As with the term “biodynamic,” TTB currently allows “sustainable” claims to appear on a label so long as the producer has the underlying documentation to support such claims.

As with biodynamic, certification agents also exist to confirm the use of sustainable farming and production practices. For example, **The Food Alliance** is a nonprofit organization that has been certifying sustainable agriculture since 1998. The Food Alliance has developed and maintains comprehensive sustainability standards and criteria for a wide range of agricultural products, including fruits, vegetables, grains, livestock, eggs, dairy, shellfish, mushrooms, grains, legumes, horticultural products, and prepared food products made with Food Alliance Certified ingredients. Within the alcohol industry, sustainability certifiers like the Food Alliance evaluate a number of criteria, including:

- standards for safe and fair working conditions;
- soil and water conservation;
- pest, waste and nutrient management;
- containment and elimination of toxic materials;
- protection of wildlife habitat; and
- other agricultural and facility management concerns.

**Compliance is Key.** Consumer demand for alcohol beverages that are organic, biodynamic or sustainable is on the rise. However, federal laws that regulate the use of these terms relative to product labeling must be considered and followed to the letter -- literally, as some of these regulations even restrict the font size that can be used!

For more information on the use of these terms, and for assistance in designing compliant labels and obtaining COLAs for organic, biodynamic or sustainable alcohol beverage products, contact GrayRobinson’s **Alcohol Industry Team** at (866) 382-5132 or [beverage@gray-robinson.com](mailto:beverage@gray-robinson.com).