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**Happy Holidays!**

All of us at  
WineAmerica  
wish you a happy  
holiday season and  
a wonderful new  
year!

Please note that  
the WineAmerica  
offices will be  
closed from  
December 24-  
January 1.

## From the President's Desk

November 2007 was a difficult and frustrating month in Congress. Facing threatened Presidential vetoes, Congress was not able to move forward with 2008 Appropriations bills, due last September. The somewhat desperate situation of a legal structure for agricultural labor is totally bogged down as many debate about illegal immigration. The Farm Bill, into which we (as part of the Specialty Crop Farm Bill Alliance) have invested so much effort seems stuck in the Senate and is also subject to a potential veto. Sometimes, this is just the nature of things and we must soldier on hoping that critical initiatives such as the Viticulture Consortium will ultimately be funded and that the will to compromise will eventually break the log jam. There is some talk that the Senate will come to an agreement on moving forward on its version of the Farm Bill. If they do so, that would be good news indeed and we could proceed to the next step in early 2008. It is unlikely that much progress will be made in December with Congress moving toward the holiday recess.

Immigration issues continue to plague farmers across the country. Many localities are passing laws which could be troublesome. Immigration and Customs Enforcement (ICE) agents are conducting raids in a somewhat unpredictable manner. These raids often

lead to workers in a wide area going "underground" and becoming scarce. Pro-enforcement members of Congress have introduced in both the House and Senate the Secure America through Verification and Enforcement Act of 2007' or 'SAVE Act' (H.R.4088 and S.2368). This legislation, while seeking to address the need for stricter Federal enforcement, fails to undertake a comprehensive approach to solving the immigration problem. If these laws should pass without more comprehensive reform, the country would face serious labor shortages especially in the agricultural sector, but in all likelihood in construction and hospitality as well.

It is estimated that 80 percent of the farm labor force is foreign born and that a significant majority of that group lacks proper authorization. The SAVE Act, by simply providing for enforcement of current laws, would jeopardize farming in this country. This is especially true for specialty crop farming which is more labor intensive than the major row crops. I urge all WineAmerica members to write both House and Senate in opposition to the SAVE Act. It is especially troublesome that the National Federation of Independent Business (NFIB) has come out in support of SAVE. I also urge our membership to contact NFIB locally and at the national level to object to their

support of SAVE.

WineAmerica continues to support AgJobs legislation as put forward by the Agriculture Coalition for Immigration Reform (ACIR). It represents a comprehensive and bipartisan vehicle for addressing and stabilizing labor problems in the agricultural sector. ACIR continues to press for AgJobs to be enacted. A wide range of newspaper editorials have recently supported passage of AgJobs.

On another immigration related issue, there is a new Employment Eligibility Verification Form I-9 that employers are required to obtain from all new employees. This new form has removed five documents from the list of acceptable identity. The new form MUST be used for all employees hired after December 25, 2007. The new form is available on the Internet: <http://www.uscis.gov/files/form/I-9.pdf>. USCIS has also published a new employer manual including instructions for I-9 forms available at this site: <http://www.uscis.gov/files/nativedocuments/m-274.pdf>. It would be good to start using the new forms immediately.

*(Continued on p.2)*

## President's Column—Continued from p.1

At this time the administration has withdrawn its August proposal on social security "no-match" letters in light of objections filed in Federal Court. We expect a new proposal sometime this spring, but it too may have legal infirmities and is likely to be challenged. For now, it seems that the status quo on agricultural workers is the byword, more or less. It is a pretty nerve wracking situation but it may be what we have to live with until there is a new Congress and a new President.

On a different note, WineAmerica held its fall meeting in Monterey, CA in early November and had quite a good

time. A highlight was the presentation of an honorary membership to Bill Moffett, a founder of our predecessor organization – the American Association of Vintners. The introduction by Art Carmichael and the speech by Bill provided a fascinating window on the struggle to get this organization started in the 1970's. At that time there was no representation for wineries outside of California. AAV became the association that provided that representation and we have certainly come a long way since then in advancing industry goals.

Also at the meeting, the Board was presented with a proposal by insur-

ance company CNA and the company now managing WineAmerica Insurance, CBIZ, to provide a royalty to WineAmerica which could be used for support of our organization and to provide cash returns for our membership who purchase insurance from our plan. To get this royalty requires that there be significant growth in our overall premium base of at least 4% in each year. This is a great incentive for WineAmerica members to encourage fellow wineries to both become a member of WineAmerica and to buy into the insurance plan. We will be putting out detailed information at the beginning of the year.

## Regulatory News

Right before the Thanksgiving holiday weekend, the TTB released three notices in the Federal Register that directly impact WineAmerica members. They are as follows:

### TTB Proposes Changes to the AVA Approval Process

On Tuesday, November 20, the TTB issued a proposed set of rules that would toughen the approval process for new American Viticultural Areas (AVAs). The main focus of the proposed rules is the approval of AVAs within existing ones and to restrict the use of brand names containing a reference to a particular region.

This past August, the TTB halted approval of all pending AVAs in order to review the approval process.

The central change is the establishment of a "grand-fathering" clause that would allow already existing geographic brand names that contain a reference to a new AVA to continue to be used as long as they have been pending for at least five years. The notice also states the TTB's authority to reject any petition

to establish an AVA that it determines would conflict with their goals or with the public interest.

The TTB also seeks to clarify its position regarding the conflict that exists when a new appellation is approved and limits the use of the regional name on wine brands. The use of brand names with a particular AVA could be confusing to the consumer, particularly if the brand that shares the namesake with the AVA does not grow grapes in that particular AVA.

This notice would prevent wineries in smaller AVAs that exists within a larger AVA from using the name of both AVAs on the label. For instance, the wine could not be labeled as "Rutherford" and "Napa Valley". This could be problematic to state laws, such as California, that require wine produced in sub-AVA also label the wine the larger AVA.

The TTB is seeking comments on these proposed regulatory revisions. The comments must be received by January 22, 2008.

For more details on submitting comments and to see the full notice please follow this link:

<http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-22717.pdf>

### TTB Seeks Comments on the Proposed Establishment of the Calistoga Viticultural Area

The TTB is also seeking public comments on the proposed establishment of the Calistoga AVA. This is the proposed AVA that led to the review of the AVA approval process. Written comments must be received by December 20, 2007.

For more details on submitting comments and to see the full notice please follow this link:

<http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-22715.pdf>

### TTB Adopts Final Rule on Small Producer Domestic Wine Tax Credit

On Wednesday, November 21, the TTB released its final ruling on the Small Domestic Producer Wine Tax Credit.

*(Continued on p.4)*

## Fall Meeting Recap



Regional Tasting Room: A Taste of Monterey

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The fall meeting in Monterey, CA on November 7-9 was a big success. Thank you to all who made the trip out there!

The fall meeting provides members and board members a chance to reconnect and to visit various wine areas around the country to learn about the local industry.

Highlights of the most recent meeting included a dinner hosted by Paraiso Vineyards and Kendall Jackson Estates at A Taste of Monterey – a regional tasting room dedicated to the promotion of Monterey County wines; a direct shipping panel discussing legal, legislative and upcoming issues in the areas of shipping and compli-



Direct Shipping Panel (from l to r): Jenny Mattingley, WineAmerica; Jeremy Benson, Free the Grapes; Jason Eckenroth, ShipCompliant; John Hinman, Hinman & Carmichael, LLC

ance; a welcome reception hosted by

Family Winemakers of California; and the State Associations Council meeting which gave SAC members an opportunity to update each other on the state of their industries and share ideas on current issues.

A unique portion of the meeting was the presentation of the Honorary Membership to Bill moffett, one of the

founders of WineAmerica's predecessor organization, Association of American Vintners. Bill, also a co-founder of Vineyard & Winery Management Magazine, was instrumental in ensuring that a group was formed to represent all wineries, not just



Bill & Hope Moffett accept their Honorary Membership from Board Chairman Steve Gibson & WineAmerica Insurance Administrator Art Carmichael

California, at the national level. Through his hard work AAV was formed. Bill and his wife, Hope, were on hand at the meeting to reconnect with WineAmerica and accept the membership. Welcome back!

Meeting attendees also heard from a variety of speakers: Congressman Sam Farr (D-CA) spoke about the outlook on the Farm Bill and immigration reform, State Representative Tom Berryhill (also a member of CAWG) spoke about the issues facing the California wine industry, and John Gillespie of the Wine Market Council provided an update on consumer and sales trends in the industry. The Supplier sponsors also addressed the group on topics ranging from shipping compliance (ShipCompliant), shipping (FedEx), direct to trade sales (Inertia Beverage), and marketing data (IRI).

What is apparent from the meeting is that the industry as a whole is continuing to grow and mature. Many positive steps are being taken by wineries to educate state lawmakers, discover their economic impacts on their states, and explore marketing channels to outreach to consumers.

However, there is still much work to be done in growing a consumer base, creating pro-winery laws at the state and federal level, and encouraging wineries in the industry to be active and involved in their state and national associations.

Minutes from both the Board of Directors meeting and the SAC meeting, as well as power point from speaker presentations, are posted under the Quicklinks tab on the Members Only Page.

WineAmerica Board Chairman Steve Gibson (Habersham Winery, GA) address the group during the meeting



These issues and more will be explored further at the annual

**Wine & Grape Policy Conference, held in conjunction with the Winegrape Growers of America, in Washington, DC – March 9-12, 2008.**

**Please Mark Your Calendars!**

## Regulatory News—Continued from Page 2

The Small Domestic Producer Wine Tax Credit is available for person(s) who produce not more than 250,000 gallons of wine during a calendar year. The credit applies only to wine that has been produced at a qualified bonded wine premises in the United States.

The small domestic wine producer tax credit is available only to the eligible proprietors engaged in the business of producing wine. A proprietor who

has a basic permit to produce wine but does not produce wine during a calendar year may not take the small producer wine tax credit on wine removed during that calendar year. A proprietor who has obtained a new wine producer basic permit may not take the small producer wine tax credit on wine removed until the proprietor has produced wine.

To see if your winery qualifies for the tax credit and to read the TTB Federal

Register Notice please use the following link: <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-22698.pdf>

WineAmerica will be following any developments regarding these TTB notices. For more information please contact Michael Kaiser, Manager of Regulatory Affairs, at [labels@wineamerica.org](mailto:labels@wineamerica.org).

## Guest Column: Winemaking & the Perishable Agricultural Commodities Act

What is the Perishable Agricultural Commodities Act, or PACA, for short? Administered by the Department of Agriculture (USDA), the PACA protects businesses buying and selling highly perishable commodities like grapes. It does this by establishing and enforcing a code of fair trading practices, providing a forum for resolving commercial disputes, and by protecting unpaid produce suppliers of fresh and frozen fruits and vegetables.

At this point you may be wondering how the PACA applies to your winery because you probably do not think of your firm as one that is involved in the fruit and vegetable industry. The PACA applies to most processors of fruits and vegetables that make products like fruit juice, ice cream, baked goods and, yes, wine.

A winery falls under the jurisdiction of the PACA when it purchases more than 2,000 pounds of grapes that were grown outside the State where the winery is located. For example, a winery on the east coast that buys grapes grown in California is subject to the PACA if the amount of grapes purchased in a day exceeds one ton. A winery that processes only grapes grown on site or purchases only grapes grown in their home State is not subject to the PACA.

The PACA program is user-fee funded through licenses issued by USDA to

produce companies that are operating subject to the law. Almost every business operating in the United States that buys or sells fruits and vegetables in interstate or foreign commerce must have a PACA license.

Wineries that operate subject to the PACA fair trading provisions receive all the protections established by the law and also are required to abide by the law's legal requirements.

The PACA protects your business by requiring produce traders to live up to the terms of their agreements. For instance, a seller, like your grape supplier, must ship grapes to you that meet the terms of your contract. This includes meeting the quality requirements of the contract, making sure that any labels on the lugs are accurate, and even shipping the correct variety. If you have a dispute with your supplier, you can ask the experts who work for the PACA program to help resolve the matter. All PACA specialists are knowledgeable about perishable commodities and are trained in mediation procedures and techniques to help parties resolve their disputes outside of the court system. Every year these professionals handle several thousand cases, the vast majority of which are resolved informally.

If you sell grapes that you grow to other wineries, the PACA Trust also provides financial security in the event

that your customer files for bankruptcy or goes out of business. Since the enactment of the PACA trust provisions in 1984, sellers have recovered hundreds of millions of dollars that most likely would not have been otherwise collected. This is because in the event of a bankruptcy or business failure, a debtor's produce-related assets are not available for general distribution to creditors (including secured creditors like banks) until all valid produce trust claims have been satisfied. Produce suppliers that file for trust protection, therefore, have a far greater chance of recovering money owed to them when a buyer goes out of business.

Other benefits that PACA provides include:

- Experts to answer any of your PACA-related questions via a toll-free Customer Service Line
- A user-friendly Web Site that offers information and many helpful tools including a self-paced Internet Training Program

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For more information about the PACA program and its services, call the PACA Customer Service Line today at **800-495-PACA** (800-495-7222) or check out the PACA program's Web Site at <http://www.ams.usda.gov/fv/paca.htm>.

## Guest Column: TTB Compliance Notes

Guest column provided by Marc Sorini of McDermott, Will & Emery, LLP—A WineAmerica Supplier Member.

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In the past four years, the Alcohol & Tobacco Tax & Trade Bureau (TTB) has increased the frequency and depth of its compliance audits of wineries and, indeed, all regulated industry members. Too often, TTB finds that wineries have failed to keep the winery's permit file up to date. This article briefly summarizes what wineries can do to stay in compliance and, in some situations, avoid the disastrous consequences of allowing a permit lapse by operation of law.

In general, wineries must maintain three distinct but related TTB approvals, leaving aside product- and label-specific approvals such as certificates of label approvals ("COLAs") and formulas. The three facility-level TTB approvals are:

1. A "basic permit" to operate a winery under the Federal Alcohol Administration Act. (Not required if all wines produced contain less than 7% alcohol by volume.)
2. Winery registration documents related to the payment of federal excise tax under the Internal Revenue Code.
3. Registration for the special occupational tax (tax currently suspended, but registration requirement remains).

### A. Changes in Proprietor or Control

As a general rule, the permits and registrations described above are not transferable. Thus, if a winery is sold, either through a stock or asset sale, great care must be taken to ensure that the new owner can continue operating with federal authorization after the transaction closes. Devastating consequences can flow from errors. For example, TTB may deem all wine produced during the time the winery was not appropriately permitted as contraband, and consequently seize and/or order the destruction of that wine. TTB also could try to assess and collect additional excise tax and penalties on the wine produced or, in certain circumstances, invoke civil and criminal penalties.

In light of these considerations, wineries contemplating any transaction should pay close attention to whether the proposed transaction would result in a change in *proprietor* or change in *control* of the winery. For example, if corporation A sells the winery to corporation B, a change in proprietor has occurred, *even if* corporations A and B are affiliates. Similarly, even if the licensed entity does not change, a change in majority ownership will be deemed a change in control, requiring the new ownership to apply for an all-new basic permit. The triggers for such changes in proprietor and control for the three categories of federal approvals can be summarized as follows:

Basic Permit	Registration	SOT Registration
<u>Change in proprietor</u> – immediate termination unless new proprietor files application within 30 days of change	<u>Change in proprietor</u> – new proprietor generally must qualify before operations commence; <i>always</i> requires a new bond	<u>Change in proprietor</u> (with limited succession rights)
<u>Change in control</u> – immediate termination unless new owner(s) files application within 30 days of change		

A winery seeking to sell or reorganize need not despair. Although a new proprietor must always obtain a new bond before commencing operations, TTB regulations provide that if the new proprietor files a basic permit application within thirty days of a change, the new proprietor can operate under the existing permit until TTB acts on the new application. Moreover, TTB's National Revenue Center staff are willing to work with companies to help make transitions happen. The important point to remember is to plan ahead before any change in proprietor or change in control and avoid the consequences of an inadvertent lapse of the permit.

### B. Other Changes

Wineries also should take care to keep their permit files up-to-date after more routine changes.

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Failure to do so certainly will earn a winery a compliance violation citation during a TTB audit, and a pattern of such failures could prompt TTB to commence “administrative action” (i.e., proceedings to suspend the permit) against the winery. The changes requiring a notice or application to TTB can be summarized as follows:

Basic Permit	Registration	SOT Registration
<u>Change corporate name</u> - notify TTB before doing business under that name	<u>Change corporate name</u> - notify TTB before doing business under that name	<u>Change corporate name</u> - as soon as possible
<u>Change/add tradename</u> - notify TTB before doing business under that tradename	<u>Change tradename</u> - notify TTB before doing business under that name	
<u>Change address</u> - timing unclear	<u>Change in address</u> - notify TTB before doing business at new address	<u>Change address</u> - within 30 days of the change
<u>Change in ownership, management or control</u> (of 10%+ owners in the case of a corporation) that is <u>not</u> a change in proprietorship or control - immediately	<u>Change in stockholders</u> - either within 30 days of the change or an annual list of stockholders submitted in May 1	
	<u>Change in corporate officers</u> - within 30 days of the change	
	<u>Other changes in original application</u> (including changes in building function shown on winery diagram) - within 30 days of the change	

In some cases, TTB may issue “variances” that simplify the notification and amendment process by, for example, allowing the winery to add new tradenames by letter notification. Once again, keeping an open line of communications with National Revenue Center staff will help ensure that your winery’s registration files are complete and up-to-date. Keeping a written record of such communications in your file will help quickly answer questions that may arise during the course of a TTB audit.

From an organizational standpoint, wineries should ensure that one employee has clear, explicit responsibility for maintaining the TTB winery registration file. Those responsibilities should become part of the employee’s job description, ensuring that this important responsibility does not become lost upon a change in personnel. At least one other person at the winery should become at least somewhat familiar with the responsibilities outlined above to further ensure continuity and coverage during leaves of absence and the like. Finally, keeping your registration file together and easily accessible is nearly as important to TTB as timely filing all required notices. Doing so will ensure that you are prepared when TTB auditors ask to examine the file.

Keeping up with TTB papers is rarely as satisfying as making great wine, but paying attention to these details can help protect a winemaker’s investment from unwanted and potentially fatal regulatory problems.

For more information, visit [www.mwe.com](http://www.mwe.com).

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