



WineAmerica Newsletter – February 2009

From The President's Desk

Difficult Times – New Opportunities

In difficult times, such as the current intensifying recession, it is important to stay on a path that will limit damage and preserve opportunities. In no area is that tactic more important than in public policy. Government is busy developing responses to the crisis. These responses vary from proposed increases in state taxes—including excise tax increases on wine—to federal spending increases intended to counter the contraction through myriad programs. Our biggest challenge is to fight off increases in wine excise taxes while understanding and exploiting the opportunities of new federal programs. All the while, there are also plenty of financial challenges wineries may face during this crisis from potential softness in wine sales to problems rolling over bank financing. For now, a bright note is that wine sales seem more or less to be keeping up.

At this time, it is already apparent that there will be many opportunities for government grants and loans, ranging from value added business development

grants, specialty crop block grants, and business financing from the Small Business Administration and the rural development agency within USDA. Taking advantage of these components will require quite a bit of effort, seeking out the key players and developing creative proposals.

With a new administration and a new Congress seeking urgent responses to the financial crisis, our March public policy meeting takes on enhanced importance. We need to seek maximum visibility with new and returning players so that these policy makers will favorably address the interests and needs of American wineries through legislation and regulation. The meeting is scheduled for March 22-25 in Washington, D.C. Information about the meeting and registration appears at the end of this Newsletter and also on line at www.WineAmerica.org.

Direct Shipment Issues

The never ending struggle to open up the important direct-to-consumer shipping market channel for wineries continues. Right now

there is quite a bit of litigation activity. Federal court decisions affecting New Jersey, Indiana, Tennessee, Kentucky, Arizona and Massachusetts are likely to be appealed. At the center of these cases are four key somewhat overlapping concepts:

- (1) Must states ensure that winery regulations principally directed at in-state wineries, having only an incidental effect on interstate commerce, regulate out-of-state wineries in precisely the same way (TN)?
- (2) If states allow mandatory three-tier system exceptions for in-state wineries, must they provide equivalent exceptions for out-of-state wineries, *i.e.*, a mechanism for selling directly to consumers (NJ)?
- (3) Are certain burdens such as face-to-face ordering requirements inherently discriminatory when they effectively favor local wineries (IN and KY)?
- (4) Can production capacity caps regulating which size wineries may

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participate in direct shipment avoid discrimination claims when it appears the state may have tailored its cap to fit the size of in-state wineries (MA, AZ)?

Additionally, there is the question of whether the Supreme Court's *Granholm* decision applies to retailers as well as wineries. The decision focused on wineries. But a district court decision in Michigan indicated that *Granholm* extended to retailers. The Michigan decision is not likely to be appealed because the state

allowed from wineries to consumers." In his view, the big fight now will be over retailers. Mr. Wolf believes there are significant differences between retailer and winery shipping and that the *Granholm* decision can accordingly be limited to wineries. One key difference is that wineries are regulated by the federal government thus making them much more likely to follow regulations and act responsibly. Fear of losing a federal basic permit is certain to make wineries more careful since the loss of the

need for perspective on this issue.

With age verification by both shippers and common carriers and the general disincentive of costs, time and risk of detection, direct shipment does not appear to be a major attraction for underage buyers of alcohol. Direct shipment on an intrastate basis has been a reality for more than fifty years. With approximately 37 states now allowing some form of legal interstate wine shipment and virtually no reports of deliveries to underage, this risk, while not zero,

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legislature recently enacted a law prohibiting both in-state and out-of-state retailers from shipping wine. We expect more lawsuits addressing this issue over the next few years.

Craig Wolf of the Wine and Spirits Wholesalers of America (WSWA) agrees with us. Speaking at a panel at last week's Unified Wine and Grape Symposium, Mr. Wolf indicated that he believes retailer shipping is the central issue yet to be resolved following *Granholm*. He stated that "wineries have essentially won the battle about whether shipping should be

permit amounts to a death penalty, putting the winery out of business.

In the discussion, Mr. Wolf expressed much concern about underage getting shipments of wine, beer and spirits through direct shipment. A study of the risks posed by direct shipment is currently being undertaken by the University of North Carolina. It is peculiar and possibly a reflection of self-interest that so much attention has been placed on direct shipment to underage individuals. Yes, there is the theoretical possibility that such shipments might occur. But there is a real

is effectively miniscule. It is important to consider this minimal risk posed by direct shipment when compared to documented alcohol consumption by underage drinkers, estimated to be 50% among 18-21 year olds per month. Virtually all of that consumption comes from alcohol obtained through the three-tier system. It would be absurd for an important channel of marketing for small wineries to be shut down because of a risk of leakage so small as to be immeasurable.

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Regarding direct shipment, our task for now is to achieve simplification and to make the promise of direct shipment to consumers a viable channel for all wineries. It is a key policy need for America's wineries. We also need to seek solutions which will allow new and small wineries to build market demand through retailers and restaurants. It should not be easier for foreign suppliers to sell their wares in the United States than for American wineries. Yet that is the present situation.

Grape Statistics

The USDA (National Agricultural Statistics Service) recently released its statistics for grape production and value in 2008 (<http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1113>). These statistics represent a first look and are likely to be substantially revised (probably upward) when final data is published in July 2009.

1) Value: The estimated value of the 2008 grape crop is \$3.34 billion produced on just under 940,000 acres. Most of the crop, about 90% in tons is produced in California. While figures for other crops will not be out for another few weeks it is likely that grapes will retain their position as sixth largest crop (behind only corn, soybeans, hay, wheat and cotton). In value the crop was more than 2006, much more than 2003 (\$2.6 billion) but marginally less than in 2007 and 2005. The value of the

crop in California was down by \$160 million (5.5%) primarily because table grapes dropped substantially in price. The value of the wine grape crop in California was actually up 3% or \$63 million to \$1.92 billion, but table grapes were much lower (down \$255 million or 41%). Washington State winegrapes were up by 23% to a record value of just under \$150 million. Oregon winegrapes were up 12% to record of \$81 million. Virginia was up 30% to a record of almost \$10 million. North Carolina was up 41% to a record of \$6.6 million. New York was up 8% to \$58 million and Pennsylvania was up 21% to \$27 million. For New York and Pennsylvania these blended figures include juice grapes. Michigan is hard to interpret because of very large amounts of juice grapes but it was down 6% to \$26.8 million. All told these non-California states had \$360 million in grape farm gate value not including juice grapes in Washington. That figure is about \$50 million more than 2007, or about 16% growth.

2) The per ton prices somewhat tracked expectations. California table grape prices per ton dropped 53.8% while wine grapes held steady at \$564 per ton. In Oregon the price per ton average, highest in the nation, increased 6% to \$2,000. Washington state had a hefty 8% increase to \$1,030.

3) Acreage remained remarkably unchanged except for Oregon and Washington which each gained

about 5%

Excise Taxes

Excise tax increases at the state level continue to be a big problem. WineAmerica is very concerned that product specific taxes could do great harm to the expansion of American wineries which are critical to making the U.S. a wine country. Please be aware of activity at your state and refer to the WineAmerica excise tax position paper: <http://www.wineamerica.org/issuepolicy/docs/Excise%20tax%202009.pdf>.

The Peanut Scare

The news of salmonella linked contamination in American produced peanut butter is very troubling. Once again food processors in the U.S. have not adequately protected the public and created an environment for media driven hysteria. Our concern is that this uproar will drive Congress to propose greater fees on all processing plants, irrespective of risk. At the end of the last Congress a proposal was floated to charge all processors, including America's more than 5,000 wineries \$2,000 per year to pay for greater FDA regulation. Such fees would extract a total of more than \$10 million yearly from wineries without regard to size. WineAmerica will continue to fight these fees, making the case that wine poses no pathogen risk to public health and that excessive fees on very small businesses would have a devastating effect on their survival.



Friends Come and Go on Committees

Jennifer K. Montgomery

The inauguration is over and the new Obama administration has hit the ground running. In a flurry of cabinet appointments, policy roll-outs and shuffling of committee assignments, Capitol Hill is getting down to business. Among the committees that have made significant changes that could impact the wine and specialty crop industry are the Agriculture and Appropriations Committees.

The changes on the House Agriculture Committee start at the top. While Rep. Collin Peterson (D-MN) remains as chair, Ranking Member Bob Goodlatte (R-VA) has stepped aside because of committee term limits. He has been replaced by Rep. Frank Lucas (R-OK), a long serving member of the committee. His district has several wineries, but is dominated by program crops and he has publicly stated that he will be a strong voice for production agriculture (program crops). This will probably bring a notable change in the committee's leadership philosophy because Goodlatte's approach was that agriculture policy should be balanced and serve all the agriculture community, including specialty crops. Based on Lucas's statements, it is not evident that his approach will be similar and there is some concern about program crop bias on his part.

In addition to changes in the full committee leadership, there are changes in the Agriculture subcommittee that specifically deals with specialty crops issues (Horticulture and Organic Agriculture) that are positive. Rep. Dennis Cardoza (D-CA), a champion of specialty crops during the recent Farm Bill process remains as chairman. Three new additions, freshmen Congressmen Frank Kratovil (D-MD), Eric Massa (D-NY) and Kurt Schrader (D-OR) have districts with large numbers of wineries and have worked closely with their home state wine and /or specialty crop industries before coming to Congress.

On the Senate side, there are two freshmen Senators whose appointments to the Senate Agriculture Committee should be helpful for specialty crops. Newly minted Senator Kirsten Gillibrand (D-NY), a former member of the House Agriculture Committee, was tapped by New York Governor Patterson to fill the seat of former Senator Hillary Clinton. Her support of specialty crops on the House side is expected to carry over to her new assignment. Senator Mike Johanns (R-NE) was the Secretary of Agriculture when the current Farm Bill deliberations began. His strong opinion at the time was that

specialty crops should be included in the Farm Bill and he was unwavering in that belief as Secretary. He is expected to be a voice for balance in agriculture policy. Senator Michael Bennett (D-CO) is also a new member of the committee and it is hoped, considering the large wine industry in his state, that he will be helpful on specialty crop issues.

There are some additions to the Appropriations Committees that may bode well for the industry. In the House, Rep. Lincoln Davis (D-TN) is a new member of the Agriculture subcommittee of the House Appropriations Committee. With several wineries in his district, he is very much aware of the specialty crop industry and has been open to discussion of industry needs. Rep. John Salazar (D-CO) is now on the full Appropriations Committee and has been a long-standing champion of specialty crops. In the other chamber, Sen. George Voinovich (R-OH), a known ally of the Ohio wine industry, has been assigned to the Appropriations Committee.

It will be vital to educate and maintain contact with these new committee members as the committee agendas move forward and implementation of the Farm Bill continues.



Regulatory Update

TTB Issues Updated Guidelines on Alternating Proprietorships

TTB recently issued Industry Circular 2008-4 which provides updated guidance on the process and procedures for alternating proprietorships. An alternating proprietorship arrangement exists when two or more persons or entities enter an agreement to take turns using the same bonded

Industry Circular 2008-4 also illustrates the differences between alternating proprietor arrangements and “custom crush” arrangements. The most obvious difference concerns labeling. In the case of an alternating proprietorship, each winery producing wine on the premises is

TTB’s most significant concern in this area is the independence of each proprietor and the mechanisms for keeping each producer’s records and wines separate. For instance, while the alternating proprietorship agreement may allow the tenant proprietor to use the proprietor-

An alternating proprietorship arrangement exists when two or more persons or entities enter an agreement to take turns using the same bonded winery premises to produce wine.

winery premises to produce wine. In almost all situations, an existing proprietor-owner of a bonded winery agrees to rent space and equipment to a new proprietor. Such agreements allow existing wineries to make use of excess capacity and give new wineries an opportunity to begin on a small scale without investing in equipment. These arrangements must be formally approved by TTB through an application and approval process. Anyone making wine for sale under an alternating proprietor agreement must qualify as a proprietor of the bonded winery and register the premises with TTB. Winery premises may not be used by or shared with any other party unless the necessary alternation applications have been approved by TTB.

Apart from outlining the standards that TTB applies to the operation of alternating proprietorships,

responsible for its own labels. In the case of a “custom crush” contract arrangement, the proprietor-owner is responsible for labeling the customer’s wine.

Industry Circular 2008-4 also restates TTB’s policy regarding use of the small domestic wine producer tax credit in alternating proprietorships. In the past, some large producers would make use of alternating proprietorship agreements to divide production among multiple “proprietors” at their winery who would each be subject to lower tax rates. TTB has prohibited this for some time under the theory that “controlled groups” of wineries should really be considered a single producer for tax purposes.

Finally, Industry Circular 2008-4 discusses when alternating proprietor arrangements are not consistent with TTB guidelines.

owner’s employees, the agreement must clearly establish mechanisms that each proprietor will use to take responsibility for production and management of their own wines.

To read the entire Industry Circular please follow this link:

http://www.ttb.gov/industry_circulars/archives/2008/ic2008_04.html

Direct Shipping Update Michigan

As we reported last month, Michigan House and Senate passed a bill drastically cutting back retail to consumer shipping. The original bill banned all retail to consumer shipping, but the Senate made a few changes that allow some retailers to deliver but not ship wine. Governor Granholm signed the bill on January 9 and it will go into effect on March 31.

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2009 Wine & Grape Policy Conference
Grand Hyatt Hotel-Metro Center
Washington, DC
March 22-25, 2009

Early Bird Registration Fee: \$230.00

(Received on or prior to March 1st)

Regular Registration Fee: \$280.00

(Received after March 1st)

To Register go to: <http://wineamerica.org/membership/springmeeting.cfm>

Hotel Accommodations: *Please Book These On Your Own*

Rates: \$275/night single occupancy and \$300/night double occupancy, taxes not included

Cutoff date for the room block is February 23, 2009. *Hotel rooms fill up fast. Please make your hotel reservations before this date!*

For hotel reservations, please call the Grand Hyatt Hotel at 202-582-1234 and reference the WineAmerica Spring Meeting to receive the special group rate.

Please contact WineAmerica if you have problems reserving a hotel room.

Preliminary AGENDA

Sunday, March 22

- 11:00AM-5:00 PM WA Executive Committee Meeting
- 3:00-5:00 PM WGA Meeting
- 5:00-7:00 PM WA/WGA Informal Welcome Reception
- 7:00-10:00 PM No-Host Dinners @ Select Restaurants

Monday, March 23

- 8:00-8:30 AM Welcome Remarks and Breakfast
- 8:00-11:45 AM Joint WGA and WineAmerica Policy Sessions
- 12:00-1:30 PM Policymaker Luncheon (Speaker TBA)
- 2:00-5:00 PM Department of Agriculture
- 7:00-9:00 PM No-Host Dinner

Tuesday, March 24

- 7:30-8:30 AM Policymaker Breakfast (Speaker TBA)
- 8:30-10:00 AM Concurrent WGA and WineAmerica Board Sessions
- 10:30-5:30 PM Hill Visits
- 5:30-8:00 PM "Taste the Wines of America" Congressional Reception

Wednesday, March 25

- 7:30-12:00 NOON WA State Associations Council Breakfast & Meeting
- 12:00-5:00 PM Hill Visits Continued