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WineAmerica On the Road

WineAmerica will have a booth at the Unified Wine & Grape Symposium in Sacramento. If you're in town for the trade show, make sure to stop by and say hello!

From the President's Desk

Happy New Year! I hope everyone had a great holiday and sold lots of wine. As we look at the new year there are, of course, still many challenges ahead. December was highlighted by a somewhat unexpected passage of the Senate's version of the Farm Bill. After a few weeks of partisan bickering, the leaders got together and agreed on a series of amendments which mostly failed, though the bill finally passed with a very hefty and surprising margin of victory, 79-14. In December, WineAmerica filed a brief in the appeal of the district court ruling striking Indiana's initial face-to-face requirement for direct shipment of wine. And in the last days before Christmas, Congress sent the President a huge "omnibus" appropriations bill which he signed.

Appropriations

The Appropriations bill restores some key elements for grape research, including the Viticulture Consortium which received approximately \$1.6 million, a decrease from the \$2.1 million received in 2006, but at least restoring this most important project after the confusion of the FY 2007 Appropriations when no earmarks were funded. Other important items were also funded in the bill. Pierce's Disease research received \$1.642 million, down from \$2.189 in FY 2006. Most of the CSREES research items were funded at 75% of FY2006 levels. These include Small Fruit Research in the Northwest, Washington Winegrape Foundation Block, and the Missouri Vitus Gene Discovery projects.

The bill had no increases for ARS research, but the proposed Grape

Research building in Geneva received another \$1.833 million as did the Davis Center for Advanced Viticulture and Tree Crop Research. Value added grants did not receive funding because it is expected that the Farm Bill will provide those funds in 2008. Pierce's Disease containment in APHIS received almost the same amount as in 2006, \$23.175 million. \$1.0 million was allocated to the Light Brown Apple Moth. Value Added grants were funded at \$19 million, down \$1.5 million from 2006. Overall the appropriations amounts were somewhat disappointing because they were significantly less than received in 2006. In a difficult fiscal environment, with threatened Presidential vetoes, it was a relief that at least reasonable amounts were funded for 2008. We will have to redouble our efforts next March to seek appropriate funding levels for grape related items. This will be further complicated by potential funding included in the Farm Bill, if it indeed becomes law.

Farm Bill

Passage of the Senate's version of the Farm Bill was difficult, as seems to be the case for most legislation in the narrowly divided Senate. Yet, just as observers were beginning to give up hope, the Senate came together to pass a pretty decent Farm Bill which must now be reconciled with the House and put into a form acceptable to the President who has indicated that he has problems with both versions and may veto a bill sent to him by Congress because of payments to rich farmers and some "tax reforms" which he characterizes as "tax increases" in the House bill. Provisions in the Senate bill

include:

- Specialty Crop Block Grants: \$270 million (five year total) in mandatory funds (not normally subject to appropriations) as compared to \$365 in the House. The Senate bill calls for minimum grant to states to be 1/2 of 1 percent of yearly total.
- Specialty Crop Research Grants Program: A new research grant fund for specialty crops, \$80 million (5 yr.) in mandatory funds compared to \$215 in the House.
- National Clean Plant Network: \$20 million (5 yr.) in mandatory funds. Same in House.
- Value Added Producer Grants: Only authorized but not funded by Senate. House provides \$150 million (5 yr.) in mandatory funds.
- Market Access Program (MAP): \$1.1 billion (5 yr.) in mandatory funds. House \$225 million per year, \$1.125 billion (5 yr.) mandatory. This compares to current level of \$200 million per year.
- Tree Assistance Program: Expanded to include nursery growers, limit increased to \$100K per year from \$75K over five years and mandatory funding \$120 million (5 yr.). The Senate bill requires crop insurance to be eligible. House increases limit to \$150K per year.
- Conservation Programs: Both Senate and House have attempted to alter language to make these programs more responsive to needs of specialty crop producers.

(Continued on p.2)

President's Column—Continued from p.1

While the House bill is generally more favorable, the inclusion of at least some funding in the Senate bill for most of our initiatives is very encouraging and a bit surprising as our centerpiece item, Competitiveness Block Grant to the states faced very strong opposition from senior senators. We will need to fight to gain favorable consideration as the conference committee reconciles the two bills.

Indiana Amicus Brief

Indiana's relatively new statute (2006) on direct shipment was appealed as unconstitutional because of various burdens placed on wineries which the trial judge found to be discriminatory to out-of-state wineries. The ruling struck as unconstitutional provisions requiring a first "face-to-face" transaction and prohibiting wineries with authority to sell at wholesale from applying for shipping permits. His decision was appealed to the Seventh Circuit Court of Appeals by the Indiana wholesalers. WineAmerica filed an amicus brief in that appeal in December.

WineAmerica's amicus brief undertook to explain to the Court the burdens faced by wineries throughout the country as they try to do business with Indiana customers. The Constitution was based on the concept of a single national market, yet the kinds of restrictions placed by Indiana have the effect of precluding most of the nation's wineries from enjoying the benefit of shipping, and therefore in many cases from being able to market to customers in Indiana. It was against similar barrier in the pre-constitution United States, that the constitution removed regulation of interstate commerce from each state and expressly reserved it to the Congress. The Supreme Court clearly stated this in *Hood v. Du Mond*:

"Our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the Nation, that no home embargoes will withhold his exports, and no foreign state will by customs duties or regulations exclude them. Likewise, every consumer may look to the free competition from every producing area in the Nation to protect him from exploitation

by any. Such was the vision of the Founders; such has been the doctrine of this Court which has given it reality."

To these ends, the Supreme Court has applied the dormant *Commerce* Clause to "prohibit[s] economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *New Energy Co. v. Limbach*.

If the founders were concerned about isolation and economic *warfare* that might take place in a nation without a Commerce Clause, the current patchwork of state wine regulations proves that their fears were prescient because the framers' vision of a seamless economic union is not a reality when it comes to interstate shipment of wine. But for the Commerce Clause, one might expect all states to have trade laws legislated to favor in-state businesses as indeed the Indiana wine statutes are designed to benefit the in-state distributor cartel-like network.

Part of the brief explains the origins of the mandatory three tier system, an understandable mechanism in 1933 when there were few wineries, but clearly a huge handicap in the current environment with more than 5,000 wineries. In this new environment, it is completely impractical for wineries to rely solely on distributors who in most cases are just not interested in selling the wines of the small and unfamous. The economic advantages wineries confer a state's economy have therefore led to each state relaxing the three tier restrictions on in-state wineries, allowing wineries to sell to consumers and in about three-quarters of the states allowing direct shipment of wine—from the producer directly to the consumer.

In the aftermath of the *Granholm* decision, 37 states and the District of Columbia now allow at least some form of interstate direct shipping of wine. Nevertheless a new trend of restriction is emerging in the guise of extremely complex and opaque statutes which seem to have been enacted, in many cases, with more of an intent to impede commerce than to allow the development of a true national market. This patchwork of state regulation is precisely the type of economic Balkanization that the Constitutional Convention sought to prevent in adopting the Commerce Clause. Like many of the complex laws enacted by other

states, Indiana's statute calling for an initial face-to-face transaction and prohibiting wineries that wholesale from shipping to Indiana consumers contributes to a system of regulation making business for the small winery next to impossible. Indiana's onerous requirements amount to taking so called "geographical advantage" to the point of ingenious protectionism. Without court intervention, clever lawmakers working with in-state lobbyists for powerful interests like the Wine and Spirits Wholesalers of Indiana can be very creative and easily exploit superficially nondiscriminatory laws as a means to favor in-state businesses in direct contradiction to *Granholm*. Thus, seemingly even handed, statutes can be manipulated to provide effective discrimination in favor of in-state businesses.

Indiana law transparently favors in-state businesses, both wineries and distributors. There can be no question the provisions in dispute owe their existence to the clout of distributors and their desire to protect a virtual monopoly on sales and distribution of wine and to the invisibility of nonresident wineries in state legislatures. Yet, the unresponsive nature of the wine distribution system and the burdensome regulations of the Indiana direct ship statute make it virtually impossible for most out-of-state wineries to market their wines to Indiana consumers. For the public, these laws raise prices and decrease selection. For wineries, these laws Balkanize the wine market and erect barriers to a national market. Such laws limit the viability of many wineries across this country. It is difficult to appreciate a compelling state need to protect the cartel-like wholesalers who have not been hurt in other states when direct shipment of wine has been allowed. The dormant Commerce Clause does not tolerate discriminatory burdens, and as the Supreme Court has made clear in *Granholm* the Twenty-first Amendment does not excuse them. The full brief can be found on the WineAmerica website at <http://www.wineamerica.org/issues/state.htm>

All in all December was an eventful month to cap off an eventful year.

Register Now for the 2008 Wine & Grape Policy Conference

When: **March 9-12, 2008**

Where: **Grand Hyatt Hotel in Washington, DC**



Why:

Every March winery representatives from around the country join with the Winegrape Growers of America for three days of meetings in Washington, DC. During the meetings, attendees learn about critical industry issues, such as the Farm Bill, immigration reform, and research funding, and meet with USDA representatives and Congressmen to educate them on issues that will directly affect the industry in the coming year. Attendees also spend time visiting their Congressional Delegation and showcasing their wines during the popular "Taste the Wines of America" Congressional reception.

If you want to be in the know about the issues that will directly affect your winery at the federal and state levels, this is the meeting to come to. It is also a great opportunity to network with folks from around the country and to learn more about WineAmerica.

Register Online Today:

The annual meeting is open to all WineAmerica members and State Association Council members and we encourage you to join us in Washington, DC!

<http://www.wineamerica.org/meetings/spring.htm>

Reminder: The comment period for Federal Register Notice #73: Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages (Serving Facts Labelling) ends on January 27, 2008. If you would like to submit comments please go to: <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=TTB-2007-0062>. If you have any questions please contact Michael Kaiser at 202-

Label Processing: Tips for 2008

As we head into 2008 the WineAmerica label approval program remains busier than ever, with nearly 3000 labels submitted in 2007. In order to better facilitate a timely approval of your labels we suggest that you leave plenty of time for the process.

Submission

For label submission please submit two copies of each COLA form on properly formatted legal (8.5" x11") size paper. The actual size copies of each label must be physically affixed to the form in the space provided. Please do not staple the forms together. We recommend that you submit your COLA forms at least two months before bottling, which will allow time for revisions and resubmittal, if needed.

Processing Time

Officially it takes about three to four weeks for COLA forms to be reviewed by the TTB. Over the last few months the average turnaround time has been about a week, but that could change at any time.

Expedites

There is always the option for expediting review, but we discourage members from requesting this too often. Recently, the turnaround time has been so quick that the TTB has rejected expedite requests on the basis that they were not necessary. All expedite requests should be submitted before the labels are submitted to the TTB.

Online Label Status

You can view the status of your label submissions on your WineAmerica Member's Only page at any time after they have been submitted.

Status Requests

The TTB will not allow status checks on labels until they have been in their system for 30 days. They are very strict about this. If your label has been in the TTB's system for 30 days we will initiate a status request.

Process After Approval

Once the labels are approved you will receive a faxed copy of your approvals, and the original copy will be put in the mail that same afternoon. If the label is rejected, we will fax you a copy of the rejection in order for you to see what revisions are needed.

Questions?

If you have any questions, please contact Michael Kaiser, Manager of Regulatory Affairs, at 202-783-2756, Ext. 129 or via email at labels@wineamerica.org.

WineAmerica Insurance Program to Provide Dividends

During the fall Board of Directors meeting the Board approved a plan that restructures the WineAmerica Insurance program to provide dividends to WineAmerica members that have an insurance policy through the Association.

Under a new agreement with our Insurance carriers, WineAmerica members using our insurance program are likely to be eligible for substantial premium rebates if we successfully build the overall program. However, it is important to note that the dividend is contingent upon total premium growth, so it behooves the

membership to encourage fellow wineries to get their insurance from the WineAmerica insurance program.

Many WineAmerica members are currently insured through this program, but there is room for growth. In order to make this program a success, WineAmerica members not already enrolled are encouraged to look into the program.

WineAmerica Insurance Administrators has been in the business of insuring wineries for 25 years and currently writes policies for over 400 wineries across the country.

The insurance program is specifically tailored to meet winery needs, unlike many local programs that do not provide coverage for certain items critical to winery operations. Basic coverage includes property insurance, liability insurance, workers' comp and winery bonds.

For more information on this program, contact Sue Varnell at WineAmerica insurance Administrators - 1-800-524-4442 Ext 3589 or e-mail svarnell@cbiz.com.

Guest Column: Testing Wine to Achieve Your Vision

By FL Biagnostics, a WineAmerica Platinum Supplier member

Making wine is often a matter of personal preferences and what just feels right. However, with the right chemical and genetic analyses characteristics of the wine making process steps a wine can become more of the vision that the vintner desires for the wine.

New approaches to wine analysis can assist you to achieve that vision. Modern advances in the genetics and the biochemistry of the winemaking process are now available to vintners. Examples of the tests that are now technically feasible include:

- Select vines based on their underlying genetic capabilities.
- Choose grapes for desirable levels of chemical precursors.
- Genetically and chemically monitor:
 - Yeast viability and ethanol fermentation
 - Bacterial viability and ML fermentation
 - Presence of undesirable organisms
 - Aging process:
 - Maximize the formation of complex biochemicals
 - Minimize the impact of contaminating organisms
- Evaluating the sterility of all wine processing steps in 2 days or less.
- Quantifying the anti-oxidant content

of the final product.

The following tests can add the most value to a winemaking process:

- **Anti-oxidant (i.e. resveratrol) gene expression and chemical analysis tests for vines, grapes, yeast, and bacteria.** Winemakers know that it is the combination of the grape, vine and the environment's biological components that make great wine. If the naturally occurring enzymes that produce key chemicals for antioxidant production are not present then the wine cannot contain the healthy and desirable anti-oxidant compounds.

Or if yeast or bacteria are actively destroying the anti-oxidants or their precursors while the wine cures then the final wine product could have small or no anti-oxidants. Genetic and chemical tests can be performed to evaluate this complex array of biological and chemical phenomenon during every stage of the wine production process

- **"Bretty" wine gene expression and chemical analysis tests.** The characteristic formation of Brettanomyces ("Brett") smell, or taint, is not merely a question of whether there is Brett in the wine. The "Bretty" taint formation is a complex biochemical pathway which consists of several interacting genes and chemicals.

At low levels of Brett gene expression the presence of Brett can add a nice character to wine, such as a smoky or even a 'bacon' smell. However, when other genes are activated a chemical process can begin on the Brett that can suddenly become the tell-tale 'Bretty' smell that can, if left unchecked, leave a wine undrinkable. Gene expression tests with chemical analysis results can be used by a winemaker to properly time the 'killing' of the Brettanomyces to achieve the most character with the least 'taint'.

It is up to the winemaker to determine what tests are appropriate, but it is important to know what is available and to understand that these tests are one of the many tools used in the winemaking process to create quality wines.

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Guest Column provided by **FL Biagnostics**, a WineAmerica Platinum level member. **FL Biagnostics** is a biochemistry, chemistry, and molecular genetics company that offers a novel approach for vintners to reach their wine-making objectives. Order your tests online or by calling us Toll Free: 877-245-5522 or www.flbiagnostics.com

New Years Reminder Part 1: WineAmerica Supplier Members

Looking for packaging supplies? Need to upgrade your winery website? What about financial planning and label design?

Wineries require many things to be successful – access to necessary supplies is one of them.

As a WineAmerica member, you have a built in relationship with the WineAmerica Supplier Members. They offer a range of products and many of them offer member only discounts.

The WineAmerica Virtual Trade Show should be one of your first stops when you need supplies for your winery. Each Supplier has their own “booth” where they discuss services, discounts, and contact information.

Below is a quick guide to the WineAmerica Suppliers and their services. Remember, these are suppliers who support WineAmerica and the industry – don’t forget to give them a second look.

WineAmerica Supplier Members:

Consulting, Training & Data Tracking

- Beer & Wine Services
- Communicating for America
- eSkye Software
- Group Martin
- Health Communications (TIPS) *(12% off eTIPS)*
- Information Resources
- MKF Research LLC

Financial & Insurance Services

- Heartland Payment Systems
- McCandlish Holten, PC
- The Rawls Group *(free consultation)*
- WineAmerica Insurance Administrators

Printing, Design, Tasting Room Items

- Cosmo Graphics
- D&S Awards and Engraving
- Vintage Concepts

Legal Services & Licensing Assistance

- Davis Wright Tremaine, LLP
- Hinman & Carmichael, LLP
- McDermott Will and Emery LLP

Nursery Supplies

- Kendall-Jackson Nursery

Shipping Tools

- Crush Creative Packaging
- FedEx *(26% discount on shipping)*
- IDology, Inc. *(\$300 annual discount)*
- Pride Polymers
- Six88 Solutions *(16% off list price)*
- Universal Packaging *(10% discount)*
- Valley Wine Storage
- Wine Packaging by Naylor *(3% discount)*

Website Design/E-Commerce Tools

- Inertia Beverage Group
- Spider Graphics *(15% off core package)*
- WineWeb *(20% off set-up fees)*

Wine Clubs & Merchants

- Appellation America
- Northwest Wine Stores
- Reserve List Denver
- Simply Wine Today
- Vine Tales Enterprises, LLC

Winemaking Supplies

- Presque Isle Wine Cellars

Winery & Vineyard Products

- FL Biognostics
- VICAM

**WINEAMERICA
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New Years Reminder Part 2: WineAmerica Membership Tools

As a WineAmerica member, you are probably familiar with the most popular membership benefits, such as label assistance, FedEx discounts, and monthly newsletters. But did you know that there are many more tools that have been created to help you run your winery?

Don't forget to take advantage of:

The Members Only Section

This page includes your dues status, label database, Trailblazers program information, WA position papers, discount program sign ups, and the export assistance center.

The Development Center

The Winery Development Center is a one stop resource for wineries at all stages of growth. The Center contains information on various funding opportunities, including sustainable agriculture, guaranteed loan programs, renewable energy grants/loans and more.

The WA Shipping Tool

This tool allows you to select a state and view the shipping permit requirements for that state. It also provides links to necessary forms and information.

The Virtual Trade Show

Each WA Supplier Member has their own "booth" where they list product and service information and any offered discounts.

The Virtual Label Assistant

If you are working on a label and need to find basic information or double check that your label has been done correctly, use this tool to walk you through label regulations.

The WA Lobby Center

This Center contains issue talking points, sample issue letters and Congressional contact information, access to state statutes, guides to working with the media and working with the state legislature, and a state legislation tracking guide.

These tools contain information to help you get full use of your membership with WineAmerica. Make sure that the appropriate staff at your winery knows that these programs are available. And remember, you will need your WineAmerica user name and password to log in to each of these tools.

WineAmerica
The National Association of American Wineries

