



WineAmerica Newsletter – January 2010

From The President's Desk

And so 2009 has finally ended. Time for a deep breath. As we celebrated 2009's beginning last New Years Eve, the worst and easily most frightening financial crisis since the Great Depression was at its apex. Businesses and consumers panicked. Spending effectively stopped. In our industry, wineries became understandably concerned about their credit lines and instituted drastic cost saving measures, wholesalers entered full inventory reduction mode and were even slower to pay than usual, and consumers closed their wallets. WineAmerica took its lumps too, as members delayed or failed to pay their dues, drastically reducing our reserves. While financial management and recovery has become a larger priority for our organization, we are proud of the fact that our focus has stayed with the big policy issues affecting our industry and that we can report some major successes in 2009.

Both the new Administration and Congress entered with high ambitions when they took office in January 2009. Almost immediately, we faced serious threats. Alcohol excise tax increases were proposed early on in the health care bill proposals to help pay for expanded coverage. The plan would have increased wine taxes from \$1.07 to more than \$4.00 per gallon. The proposal was based on an "equivalence" principle—that all alcohol beverages should be taxed at \$16.00 per proof gallon regardless of product. The effect would have proved far more onerous to winemakers than other producers. For instance, under the plan spirits taxes would only have increased from \$13.50 to \$16.00 per proof gallon. Last February, the Administration also proposed the introduction of TTB user fees, essentially reinstating the Special Occupational Tax by imposing minimum costs of \$500 to \$1,000 per winery and possibly much more. A still unfinished Food Safety bill initially called for \$2,000 user fees per food producer, including wineries, coupled with a completely superfluous, redundant and burdensome regulatory regime from the Food & Drug Administration. That we survived the year without any of these threats being realized is a tribute to the importance of and the success of WineAmerica as an organization. While the Food Safety bill is still being worked on, the House has endorsed the concept of exempting alcohol producers from both regulation and fees. The Senate is moving in that direction but has not yet made a commitment.

There were other major issues for WineAmerica in 2009. We helped craft legislation in numerous states to improve state winery laws. We began to explore international wine marketing opportunities and sponsored a TTB seminar in D.C. for state associations that highlighted the wide range of government agencies and resources that can help make exporting easier. We worked, in partnership with the TTB, to soften the impact of winery audits. We made progress in developing a winery law data base, and closely followed and

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reported on the development of a World Health Organization Draft Strategy to Reduce Harmful Use of Alcohol. We were engaged, together with our international consultants, to make sure that wineries using terms like “chateau” or “clos” in their brand names can continue to export wine to European countries. The sum total of all these efforts strained our capabilities and resources but we are pleased that we have been able to shape the outcomes in a direction favorable to America’s wineries.

The upcoming year promises numerous challenges. We still have to finish the Food Safety bill. There is talk that immigration reform will be considered. Early preparations for the 2012 Farm Bill must begin. We will need to address the problems raised by various TTB rulemakings including potential new regulations affecting AVAs, as well as serving facts and allergen labeling. WineAmerica is also considering petitioning TTB to allow the use of the term “fortified wine” on wine labels, as well as to remove the restriction on vintage dating of American appellation wines.

Our sense is that wine sales are improving, especially sales at tasting rooms and direct sales to consumers. There is new optimism that progress will be made in adding to the list of states allowing direct shipping of wine. Our partnerships with ShipCompliant and Federal Express are yielding significant discounts and improvements in the tedious task of direct to consumer sales. We will be working to enhance those relationships.

Finally, I must remind all wineries of the importance of expanding the membership base of WineAmerica. As an organization, WineAmerica needs to represent as many wineries as possible. A large membership base enhances our credibility. It also provides the financial resources to continue our activities and build our capabilities. WineAmerica will be conducting a major recruiting campaign in 2010. To be successful we will rely on peer to peer contacts by our members. We will be asking you to reach out to those wineries who are not sharing the burden of supporting good winery policy by joining WineAmerica, the only national trade association of American wineries. I strongly urge all members of our organization to make a point of recruiting their fellow wineries into the organization in 2010. Best wishes for the New Year.



Vintage Dates and American Appellation Wines

by Cary Greene

The Alcohol & Tobacco Tax & Trade Bureau (TTB) has long prohibited wines with a country appellation of origin from including a vintage date. It is one of the many technical blips that we live with in alcohol beverage regulation that doesn’t seem to matter much until it affects your business. Like many other technical rules with somewhat mysterious origins, inertia has largely kept this vintage date prohibition alive. It’s time to seek a reevaluation.

There’s a strong case to be made that “American” and other country appellation wines should be permitted to utilize vintage dates. The reasons largely relate to how vintage dates are used in the market. Often, vintage dates are thought of as shorthand for whether wines need aging, are ready to drink, or are over the hill. They also promote product transparency and lot identification, shelf management tools that protect producers and allow consumers to more clearly identify wines they like. In addition, allowing vintage dating for American appellation wines would encourage the further development

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of wine industries in nontraditional winemaking states that have occasional need for out-of-state fruit.

There are few, if any, policy justifications for TTB's restriction against country appellation vintage dating. As was stated eloquently in comments to TTB several years ago, "[w]ith the exception of the luxury-priced wine market where a particular vintage is often celebrated for its uniqueness, nearly all other wine consumers, both domestically and abroad, have specific style and quality expectations that are consistent from purchase to purchase." Change to Vintage Date Requirements, 71 Fed. Reg. 25748, 25750 (May 2, 2006).

Likewise, the vintage date restriction often has unintended consequences. Some countries restrict use of varietal labeling except in instances where a wine bears a country appellation. This means that many foreign wineries selling in the U.S. are forced to choose between vintage labeling and varietal labeling. Under the current regulations then, foreign wineries are being punished for the practices of their domestic regulators.

Prohibiting vintage dating for country appellation wines can also carry a false connotation. It can give the misimpression of product uniformity from year-to-year—that a wine is in a "house" style produced from several vintages—when that is not in fact the case. Similarly, the restriction can be misleading in the way it creates consumer confusion. If a particular varietal wine is ordinarily a vintage product, consumers may not understand why the same varietal wine, produced by the same winery, is suddenly non-vintage. Simply put, the prohibition on vintage dating can unfairly mark a wine as inferior or unfamiliar.

So long as the vintage information provided is truthful and not misleading, we can see no reason to prohibit vintage labeling for country appellation wines. Indeed, TTB in prior rulemaking has indicated that "vintage date information may be used by consumers in various ways," and has expressed a willingness to take up petitions seeking changes to their vintage dating regulations. *Id.* at 25751. Taking up TTB's invitation, WineAmerica intends to file a petition to modify the TTB regulation. The issue was addressed by our Board this past November at our meeting in Texas, and this past December we met preliminarily with TTB to discuss our members' concerns.

As WineAmerica's petition takes shape we welcome any thoughts you might have that could help make our case stronger. We'd love to hear from you and will keep you apprised of our progress as the petition comes along.



Regulatory News: TTB Approves Calistoga AVA

by Cary Greene & Michael Kaiser

The Alcohol & Tobacco Tax & Trade Bureau (TTB) has officially approved use of the "Calistoga" American Viticultural Area (AVA) for use on wine labels. The notice, issued as Notice Nos. 36 and 77, was published in the December 8 Federal Register and will go into effect on January 7. This was an unusually controversial AVA rulemaking process that began in 2005 and hit many roadblocks along the way, including a brief suspension of the AVA approval process in 2007. As TTB recognized in the December 8 Notices, WineAmerica submitted comments generally in support of the rulemaking while emphasizing that TTB's existing regulations give it the authority to appropriately determine appellation issues on a case-by-case basis.

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At the heart of the conflict were two wineries, Calistoga Cellars and Calistoga Estates, who did not source their grapes from the proposed “Calistoga” viticultural area. TTB regulations limit the use of brand names of “viticultural significance” to cases where the grapes used in the wine meet “the appellation of origin requirements for the geographic area named.” In accordance with TTB regulations, “viticultural significance” can be determined in one of three ways: (1) it is the name of a state or county; (2) it is the name of an approved viticultural area either in the U.S. or abroad; or (3) as determined “by the appropriate TTB officer.”

While the term “Calistoga” had not previously been recognized to have viticultural significance, TTB determined, as part of the rulemaking process, that “the term ‘Calistoga’ alone is a specific, not generic, descriptive name that is clearly associated with Napa Valley viticulture” and therefore “*would have* viticultural significance” if a Calistoga AVA were established. In other words, recognition of the Calistoga AVA makes Calistoga Cellars and Calistoga Estates brand names of viticultural significance subject to TTB restrictions.

This may be a shift by TTB. In the past, TTB has sought to establish designated viticulturally significant terms that allow continued use of brand names similar to AVA names. For instance, changing the proposed Eola Hills AVA to Eola-Amity Hills AVA to protect Eola Hills Wine Cellar’s right to use its brand name. TTB found the Calistoga case to be “a rare instance in which . . . an appropriate compromise between the affected parties regarding the term could not be reached.”

In the current rulemaking, TTB gave Calistoga Cellars and Calistoga Estates three years to either transition from their existing brand names or “configure their wines so that at least 85 percent of the wine is produced from grapes grown within the Calistoga viticultural area.”

This may be the first time TTB has made a choice between competing commercial interests “by requiring existing labels’ compliance with regulations establishing a new AVA.” It is unclear, however, whether the rulemaking will have any long term affect on use of geographic brand names. The circumstances that led to controversy in Notice Nos. 36 and 77 were fairly unusual, and throughout the December 8 rulemaking TTB notes its belief that it should avoid these conflicts “whenever possible” and should only choose sides “when it cannot be avoided.” One thing that certainly remains true—and that the Calistoga rulemaking throws into sharp relief—wineries should be careful when establishing brand names that might in the future have geographic viticultural significance.

A second rulemaking, Notice No. 78, is expected to make changes to the AVA system. While the principal issue in that rulemaking is so-called “nesting” AVA’s—new AVA’s within existing AVA’s—Notice No. 78 could address brand names of viticultural significance in further detail as well. We expect a final ruling on Notice No. 78 as well as notices concerning serving facts and allergen labeling sometime this year.

While all of these rulemakings could substantially change how wines are labeled, the serving facts and allergen labeling rulemakings could end up being most consequential for the wine industry as a whole. In each case, it is our goal to ensure that our membership can implement any changes appropriately. This could be a challenging prospect, but using our expertise with the label approval process and our relationships with TTB and our members we intend to work to facilitate compliance and make implementation less burdensome.



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2010 Wine and Grape Policy Conference WineAmerica and Winegrape Growers of America

Washington, DC

Please mark your calendars for the 2010 annual meeting

The annual Wine and Grape Policy Conference in Washington, D.C. is an important opportunity for members of both organizations to discuss and evaluate Federal policy issues of interest to our industry, and to communicate our stances directly to Members of Congress and the Administration. These meetings play an important role in the critical process of relationship building which is central to our mission of favorably influencing policy outcomes. It is also a great opportunity for wine industry leaders from across the country to network with each other in formal and informal settings. We hope that you will join us in March for this very important meeting.

Sunday, March 14

11:00 am – 5:00 pm: WineAmerica Executive Committee Meeting
2:30 pm – 5:00 pm: WGA Meeting
5:00 pm – 7:00 pm: WineAmerica/WGA Welcome Reception

Monday, March 15

8:00 am – 5:00 pm: Policy Meetings and Guest Speakers

Tuesday, March 16

8:00 am – 11:00 am: Concurrent WineAmerica/WGA Board Meetings
11:00 am – 5:00 pm: Congressional Visits
6:00 pm – 8:00 pm: Taste the Wines of America Wine Reception

Wednesday, March 17

8:00 am – 11:30 am: State Associations Council Meeting
11:30 am – 5:00 pm: Additional Congressional Visits

March 14-17, 2010

Phoenix Park Hotel

Washington, DC

Call the hotel at 202-638-6900 or toll free at 800-824-5419 and reference the Wine and Grape Policy Conference or use Group Code 13489 to reserve your room. The rates are \$269 for single occupancy and \$299 for double occupancy

Rooms fill up quickly in Washington, so please make your reservations as soon as possible. Meeting registration and a more formal agenda will be announced in the coming weeks.

Please contact Michael Kaiser at mkaiser@wineamerica.org with any questions regarding the 2010 Wine and Grape Policy Conference.