



WineAmerica Newsletter – May 2010

From The President's Desk

It has been a heck of a month. Our work with Congress is never evenly paced but this month has been truly crazy. We have had to marshal maximum effort on fighting to ensure winery success in three main areas:

- 1) Opposing the wholesaler initiated CARE Act which would restructure the legal relationship between states and the federal government.
- 2) Gaining a reasonable exemption from the Food Safety Bill.
- 3) Passing a good direct shipping bill in New Jersey.

CARE Act

You have to admire and shake your head at the incredible audacity of the beer wholesalers, now joined by the wine and spirits wholesalers in seeking federal legislation (CARE Act, H.R. 5034) to strip courts of the ability to enforce both the Commerce Clause and federal law in general when alcohol is involved. Such legislation would put producers at the mercy of powerful wholesaler state lobbying forces. Under the CARE Act, these forces could urge state legislatures to repeal wine shipping and other laws that allow interstate commerce in wine to grow in favor of protectionist laws. These laws could limit winery privileges, insulate wholesalers from competition, strengthen “franchise” legislation (possibly making it impossible for wineries to get out of their distribution relationships), allow wholesale tier price collusion and encourage other kinds of anti-competitive legislation favoring, guess who?

It may be true that wholesalers, who have faithfully given Political Action Committee (PAC) dollars in the past can convince Congress to turn its back on basic Constitutional and competitive protections. It all depends on your view of how craven legislators can be. But in this case, we don't have reason to believe the bill will become law. That hasn't stopped the wholesalers from pulling out all the stops to push their outrageous attempt to rewrite the legal environment governing alcohol regulation. It is hard to fathom why wholesalers would invest so much political capital on a project that is such an incredible overreach and is likely to die. It also could poison relations between producers and wholesalers, which have in recent years finally begun to improve. But we will have to see how the power play evolves.

Such legislation would be a disaster for producers. We cannot let it become law. We will have to oppose this legislation hammer and tong. WineAmerica is in the process of joining forces with Wine Institute, DISCUS (spirits producers), the Brewers Association (mostly craft brewers), and the Beer Institute (larger breweries) to present a united front against this ill-advised wholesaler effort. It will be a battle.

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WineAmerica has developed papers and talking points as we mobilize winery opposition across the nation to this legislation. At this point the bill has 51 cosponsors and 39 Attorneys General have signed a letter to Congress urging that it act to preclude litigation which could lead to deregulation of alcohol beverages.

Some of our talking points follow:

- The Beer Wholesalers (NBWA) are pushing H.R. 5034 to reverse 40 years of court precedents and allow states to pass discriminatory and protectionist alcohol laws without fear of Commerce Clause or other federal constraints.
- Underlying the smoke screen about potential deregulation of alcohol is the true motive – *this is an anti-competitive request intended to protect wholesalers from competition.*
- Lawsuits have largely resulted from wholesalers' (Goliath) unwillingness to help us (David) find a way to get our products to market.
- Exemptions from federal laws usually have important unintended consequences. States are likely to abuse exemption to try to make laws that have nothing to do with alcohol look like alcohol laws.
- States already have broad authority to regulate the sale of alcohol beverages, collect taxes and promote temperance. Courts have upheld these powers.

To oppose the CARE Act, WineAmerica is mobilizing its State Associations Council network to contact as many members of Congress as possible. In addition, the Free the Grapes network of consumers interested in wine shipping has generated more than 17,500 consumer letters to Congress. These are solid efforts. We expect a committee hearing to take place in June and we are working to ensure that informed testimony supporting our position from an appropriate legal source is presented. We are encouraging our membership to reach out to Members of Congress and Senators to let them know just how controversial the CARE Act is and to urge them to avoid giving it their support.

Initiatives like the CARE Act are prime examples that illustrate the importance and essential need for trade associations, like WineAmerica. Wineries need to be on Capitol Hill and *all* wineries should invest in and support these efforts. Without the resources and personnel in place to speak and lobby on behalf of American wineries we risk putting our businesses in jeopardy. It is vital that wineries support WineAmerica through membership dues to build the strong organization needed to fight back against bad winery policy.

Food Safety Bill

Some months ago, the House passed a food safety bill with a full exemption for producers of alcohol beverages. It seemed as if we were in good shape to gain an exemption in the Senate. But resistance from Senate staff led us to get into a prolonged lobbying effort in which WineAmerica played a pivotal role. We needed to provide a section by section analysis for why the Food & Drug Administration (FDA) shouldn't have authorities over alcohol beverages traditionally reserved for the Alcohol & Tobacco Tax & Trade Bureau (TTB). In this battle, after much give and take and hard fought lobbying, we seem to have succeeded. The Senate committee overseeing food safety has settled on language exempting alcohol beverage producers from most aspects of the Senate food safety bill while retaining FDA jurisdiction over certain reasonable provisions. While we haven't yet

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seen the final Senate bill, we are cautiously optimistic that the Senate language will be something we can live with and that the final bill emerging from the Senate-House conference will properly address our concerns.

New Jersey Direct Shipping Bill

A strong shipping bill has already passed the New Jersey Senate and was due to come up for a hearing in the New Jersey Assembly this week. The bill has strong momentum with support from leadership in both houses and the Governor. Not surprisingly, the state's wholesalers and retailers are putting up a real fight. They've managed to get the Assembly hearing postponed, but, so far, we are still cautiously optimistic about passage. WineAmerica has provided a great deal of technical support to New Jersey wineries who are mostly in favor of the bill passing. A pretty odd New Jersey federal District Court decision, now on appeal in the Third Circuit, is complicating the issue. Keep your fingers crossed.

Sustainability and FIVS

Worldwide there is notable movement toward sustainable products, driven by both consumers and retailers. While this trend is still rather new, it is clearly gathering momentum. Wineries are well positioned to present our products in a favorable light, both because wine is low intensity resource wise and because wine producers have been in the forefront of sustainability efforts, both in developing and implementing concepts over a broad range of producers. FIVS, an international organization of producers and producer associations led by Jim Finkle of Constellation Brands, a longtime board member of WineAmerica, has taken a leadership role in developing technical standards for sustainability and helping trade associations develop their own plans to implement them in their particular situations.

Sustainability is a concept that is based on three elements which need to be considered in concert, economic, social and environmental improvement. It is important to get the concepts right and not to just focus on the numbers – the metric that you can get from carbon footprint. Wineries are committed to improvement in all areas and not just reducing wine's carbon footprint which is already low compared to other food elements. At this time, there is a movement towards certification of producers which will gather steam as sustainability concepts evolve. There may even be a coalescing around a consensus "sustainable" definition for third party certification, although regional differences make this challenging.

WHO Update

The long awaited World Health Organization draft "Global Strategy to Reduce Harmful Use of Alcohol" is likely to be adopted by the World Health Assembly this month. Based on the draft forwarded by the Executive Board in January, the strategy is likely to be fairly flexible and reasonable, devoid of the kind of recommendations which could be harmful to producers of alcohol beverages. It will be supported by both producers and by NGO's concerned about populations at risk. A lot of hard work has resulted in a pretty good compromise document. There is still work to be done at each country level to ensure that implementations are reasonable.



SAC Swings Into Action to Oppose the CARE Act

by Jennifer K. Montgomery

With the recent introduction of the potentially harmful CARE Act (HR 5034), WineAmerica wasted no time tapping into one of its most effective grassroots resources, its State Associations Council (SAC). Made up of representatives from more than 65 state and regional wine and grape growers associations in 38 states, the SAC has become an indispensable tool in efforts to further WineAmerica's public policy agenda.

There was some indication in March that the bill would soon be forthcoming. WineAmerica almost immediately began communicating with the SAC, preparing its members for the eventuality of the work that would be necessary to help ensure that the bill did not develop a long list of House co-sponsors and get passed by Congress. Introduced in mid-April at the urging of the National Beer Wholesalers Association (NBWA), the CARE Act seeks to limit the effect of the Commerce Clause—the provision of the Constitution that gives Congress the power to regulate interstate commerce—and other federal constraints, effectively encouraging states to pass protectionist, anti-competitive laws that insulate wholesalers from competition.

Considering the bill's potential to upend the regulatory climate under which wineries operate in most states, the need for an organized, timely, national industry response was critical. It's one of the many instances where the value of the SAC was realized. In short order, the SAC had received talking points, background information and testimony on the issue from WineAmerica and was asked to make contact with their respective Congressional delegations, urging them not to co-sponsor the bill.

As the grassroots efforts have taken shape, the SAC members have been kept in the loop with each other and with WineAmerica via distribution list emails and through a conference call to discuss strategies and answer questions. At the present time, there are at least 13 states that are participating and working to oppose the bill and to make sure their Members of Congress do not co-sponsor it. These efforts have been coordinated and thoughtful and would not have been possible without the active and efficient network that the SAC provides. One of WineAmerica's greatest strengths is its grassroots and the SAC continues to be a reflection of that.



Regulatory Tips and Tools: Appellations of Origin

by Michael Kaiser

As part of our periodic series on TTB labeling rules and other requirements, we revisit TTB's labeling rules for appellations of origin.

The rules for appellation of origin are admittedly complex. There are situations where appellations of origin are mandatory and must appear on a label, and situations where appellations of origin are permitted, but not required. This summary is only a brief overview. If you have more complex questions, you should contact me and we can talk about them.

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So what are appellations of origin? Most importantly, they're a great way to educate consumers about where your wine was grown. With the growing diversity within the American wine industry, more and more consumers are educating themselves in the different growing regions and their specific viticultural characteristics. But appellations of origin can also be complex to describe. TTB takes account of this by allowing several different political subdivisions for appellations of origin. We summarize them here more or less from largest to smallest:

Country

Use of the American appellation of origin requires that 75% of the volume of the wine is derived from grapes (or other fruit) grown in the labeled appellation of origin. The wine also must be fully finished (except for cellar treatment and blending) in the labeled appellation. Vintage dating is prohibited on wines labeled with the "American" appellation of origin.

State

Use of a state appellation of origin (such as New York) requires that 75% of the volume of the wine is derived from grapes (or other fruit) grown in the labeled appellation of origin. The wine must be fully finished in the labeled state or an adjacent state.

Multi-state appellations

Multi-state appellations are permitted if not more than 3 states. The states must be contiguous, meaning that both or all three states touch at a common border or in the case of three states, they are all in an unbroken line. 100% of the wine must be derived from grapes grown in the labeled states. The wine must be fully finished in one of the labeled states. The percentage of wine derived from grapes grown in each of the labeled states must be shown on the label and must add up to 100%.

County

Use of a county appellation of origin (such as Sonoma County) requires that 75% of the volume of the wine is derived from grapes (or other fruit) grown in the labeled appellation of origin. The wine must be fully finished in the labeled appellation of origin.

Multi-county appellation

Multi-county appellations are permitted if all the counties are in the same state and the labeled appellations do not exceed three counties. 100% of the wine must be derived from grapes grown in the labeled counties. The percentage of wine derived from the grapes grown in each county must be shown on the label and must add up to 100%

American Viticultural Areas

Use of an American Viticultural Area requires that not less than 85% of the wine is derived from grapes grown (no other fruit) in the labeled viticultural area. The wine must be fully finished in the state or one of the states where the viticultural area is located.

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When are Appellations of Origin Mandatory?

If either (1) the grape varietal (such as Chardonnay or Cabernet Sauvignon), (2) the vintage date (not allowed for American appellation wines), (3) a semi-generic designation (such as Port or Sherry, if grandfathered), or (4) an estate bottled/grown statement (must appear in conjunction with an American viticultural area designation) appears on the label appellations of origin are mandatory on a wine label. Appellations of origin are required to appear on the front/brand label.

Next month we look at filing for “Certificate of Exemption From Label Approval”.



Announcing the WineAmerica Fall 2010 Board of Directors and Membership Meeting

Please mark your calendars for the 2010 Fall Meeting

November 8-10, 2010

Hampton Inn and Suites at Shelton Vineyards
Dobson, NC

About Dobson: The Town of Dobson was founded in 1850 as a consequence of a geographical division of Surry County by the North Carolina General Assembly. A central site was needed for a new County Seat, and the courthouse was completed in 1853. The Town was named in honor of William Polk Dobson, a prominent Surry County citizen, State Senator, farmer, lawyer, and member of the State constitutional convention of 1835. He was a cousin of President James Knox Polk.

From 1853 forward, Dobson has served as the host community for Surry County Government and has served as the retail, commercial and employment center for central Surry County.

Dobson became the host community for Surry Community College in 1964. The College officially serves both Surry and Yadkin counties, offering a variety of degree and diploma programs, as well as providing four-year educational opportunities. Surry Community College offers the most complete viticulture and enology program on the east coast other than Colgate University. With proximity to Interstate Highways 74 and 77, Dobson provides a southern gateway to the Blue Ridge Mountains and the Blue Ridge Parkway, and is at the heart of the Yadkin Valley Wine Region.

Dobson is a 90 minute drive from the Charlotte Douglas International Airport and a 70 minute drive from Piedmont Triad International Airport in Greensboro.

Registration and meeting information coming soon!

***If you have preliminary questions about the meeting
please contact Michael Kaiser:***

mkaiser@wineamerica.org



2010 Election Results

by Cary Greene

With so much happening at the federal level since our annual meeting in March, we held off announcing the 2010 Board election results for a month longer than we usually do. We are pleased to announce the winners of this years Board election, and to announce the appointment of one new Board member to a vacant seat.

This year Lew Parker of Willowcroft Farm Vineyards (At-Large), Jim Trezise of the New York Wine & Grape Foundation (New York), Marty Clubb of L'Ecole No. 41 Winery (Washington), Steve Thomson of King Estate Winery (Oregon), Richard Smith of Paraiso Vineyards (California), Tom Sharko of Alba Vineyard (Northeast), and Eldon Nygaard of Valiant Vineyards (Midwest) were all reelected to their respective seats. Jerry Douglas of Biltmore Estate Winery (formerly Southeast) was reappointed to the Board in a new capacity, and will be an At-Large Board member.

Each of these Board members has provided fine advice and advocacy for WineAmerica in the past and we appreciate their ongoing dedication to WineAmerica's mission. We are pleased to welcome them back.

In addition, the Board appointed a new member, Kari Leitch of St. Michelle Wine Estates, to represent Washington State. We expect Kari to prove a fantastic new asset to the Board, and look forward to building a strong and productive relationship with her.

We appreciate our Board's willingness to support WineAmerica and look forward to building on their vision for our future.

At our annual meeting, the Board also nominated Jim Ballard of James Arthur Vineyards in Nebraska to be our new Chairman and Ed O'Keefe III of Chateau Grand Traverse to be our new Vice Chairman. They have been acting in that capacity since March. Both Jim and Eddie have been long-time WineAmerica Board members and have had a positive influence on our organization. The Board and the staff have a great deal of confidence in their ability to make us an even better organization.

Under our by-laws, the Board's nomination must be approved by our members. To formalize Jim and Eddie as our new Chairman and Vice Chairman, we are giving our members seven days to approve the Board's nomination through the ballot on the next page of this newsletter.

Congratulations again to all our Board members on a successful 2010 nomination and election process.



WineAmerica
1015 18th Street NW
Suite 500
Washington, DC 20036

PHONE: 202-783-2756
FAX: 202-347-6341
EMAIL:
info@wineamerica.org

Staff Contacts

Bill Nelson, President
bnelson@wineamerica.org

Cary Greene
Vice President &
General Counsel
cgreene@wineamerica.org

Jennifer Montgomery
Dir. of Grassroots &
Political Affairs
jmontgomery@wineamerica.org

Michael Kaiser
Manager of Regulatory
Affairs
labels@wineamerica.org

Fed Ex Program Questions:

If you have any questions regarding the WineAmerica Fed Ex discount please direct them towards Michael Kaiser:

[*mkaiser@wineamerica.org*](mailto:mkaiser@wineamerica.org)

2010 Chairman & Vice Chairman Election

Winery Name _____
(Only winery members are entitled to vote on this ballot.)

Please fill out and fax back to WineAmerica at 202-347-6341 no later than **May 10**.

ELECTION OF ASSOCIATION OFFICERS

Chairman of the Board

- Jim Ballard, James Arthur Vineyards, Nebraska

Vice-Chairman of the Board

- Ed O'Keefe III, Chateau Grand Traverse, Michigan