



## WineAmerica Newsletter – October 2008

### From The President's Desk

It has been a crazy week and month in Washington. The financial meltdown and cries of impending disaster have injected serious urgency into the debate and actions of Congress. Never in my life have I seen such a significant piece of legislation (the Wall Street bailout) move so quickly, with such rapid convergence on principles, only to be blown up by the injection of politics. It is enough to make one's head spin. It's not that raw politics does not infect everything that goes on around here but that it seemed that urgency was for once trumping politics. The stunning defeat by 12 votes in the House of Representatives is mind boggling. Where do we go from here?

Confidence in the prudence and rationality of Congress, at least on transcendent issues of great national importance is becoming more shaky by the day. In the summer of 2007, it became clear that small partisan issues were getting in the way of addressing the immigration melt down, in spite of the great need for achieving a stable and economically sensible solution.

Now the posturing in the face of a financial disaster surely leads to a pessimistic prognosis. Only time

will tell if Congress and the American political system can right itself sufficiently to avoid further serious damage.

#### **Preparing for the fall meeting – policy issue concerns.**

WineAmerica's fall meeting to be held November 12-14 in Georgia will feature detailed discussions of some key issues facing America's wineries as we approach a new year with a new Administration in Washington. Some of the issues we will consider at the meeting include:

- **Excise Tax**

Given the ambitious plans of the Presidential candidates and the very tight Federal budget, there is a fear that the Government will turn to excise tax increase to reduce the deficit, much like it did in 1990. That is an issue of real concern.

- **Farm Bill**

While we were very gratified by the Specialty Crop funding contained in the Farm Bill, we still must work through the Appropriations process to be sure that the funding is not siphoned off for other uses. While Market Access Program funding has a long history of fending off redirection, the same is certainly not true for Specialty Crop Block

Grants, the Specialty Crop Research Initiative and the National Clean Plant Network.

- **Agriculture Appropriations**

The Viticulture Consortium, while a national program with competitive awards is still considered an earmark. In the current environment it will require great effort to maintain this very successful program. In addition, there are several other initiatives in Agriculture Research and pest protection which must be defended.

- **Food Safety**

In light of several food contamination and adulteration issues, it is clear that Congress will be acting to beef up its food safety programs. Unfortunately, one suggested mechanism for financing the additional effort is by means of fees on all food processing plants which could be as high as \$2,000 per year. WineAmerica will be gearing up to exempt wineries from these fees.

- **TTB and Regulatory Issues**

TTB may well have issued its regulations on Serving Facts, Allergen labeling and Appellations by the time of our meeting. If there is a ruling on any of these issues, we will discuss.

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## From the President's Desk, continued

### • **International Issues**

WineAmerica remains seriously concerned about the evolution of some key policy issues affecting wine. The most serious of these is the work of the World Health Organization (WHO) to develop a policy on abuse of alcohol. Because the key players driving WHO policy come from public health ministries of the various member countries, their sensitivity to the cultural and health aspects of wine may be quite limited. There is an industry consultation scheduled for November 6 and there will also be industry discussion of the issue at the FIVS meeting in Brussels in mid-October. We will discuss these developments along with some

other International questions like the semi-generic issue and tax classification of products like flavored malt beverages.

### • **Direct Shipment**

A highlight of the meeting will be a panel on direct shipment including a discussion of compliance challenges, the role of shippers, and mobilization of public support for improved legislation in key states.

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### **Canadian Allergen Rules**

In a major surprise a preliminary rule from Government of Canada exempts fining agents derived from milk, eggs and fish used in the production of beer and wine from the allergen labeling

requirements. The rationale for exemption was based on the absence of documented clinical evidence of allergenic reactions in sensitive individuals. That's the good news. The not so good news is they are proposing a change from standard U.S. sulfite labeling to require that products containing more than 10 ppm of added sulfites must be labeled "Allergen and Intolerance Information – Contains: sulfites." This will impose an additional labeling burden on wines exported from the U.S. to Canada. We hope that additional comments will persuade the Canadian authorities to allow more flexibility in the sulfite statement.

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## Crop Insurance An Emerging Topic for Discussion

by Jennifer Montgomery

Severe weather in recent years, along with the Farm Bill and its permanent disaster assistance title, have made the topic of crop insurance for perennials an ongoing conversation for members of the Specialty Crop industry. As a result, several perennial specific organizations representing crops such as grapes and apples, including WineAmerica, recently formed a working group to determine how well crop insurance works and where improvements may be made.

In preliminary discussion, the working group found several recurring issues of concern throughout perennial industry:

- How many growers actually have crop insurance or are enrolled in the Non-Insured Assistance Program (NAP)?
- Do growers know where to go to get a policy?
- Do Farm Services Agency (FSA) agents consistently know how to write crop insurance policies for perennials?

One pervasive problem for the wine and grape industry came to light as a result of the "Easter Freeze" of 2007. In several of the hardest hit states, the majority of growers did not have any form of crop insurance. Therefore, they found themselves on their own

when it came to recovery efforts. It also was discovered that many growers knew little about crop insurance or who to contact to get a policy. Often, it seemed there was a disconnect between growers and the Farm Service Agency (FSA) when it came to outreach and education on this issue. FSA is tasked by USDA's Risk Management Agency (RMA) to write federal crop insurance program policies.

Another problem with grape crop insurance is that the current program does not truly take into account the special needs of grape

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***(Crop Insurance —continued)***

growing. There has been some industry concern over the way varieties of grapes are grouped and monetary value assigned to certain types in different regions of the country.

The permanent disaster assistance provision in the 2008 Farm Bill requires that growers have either crop insurance or be enrolled in the Non-Insured Assistance Program (NAP) to be eligible for federal disaster assistance such as

the Tree Assistance Program (TAP). This shows that there is a definite push on the part of Congress to get growers signed up with some form of crop insurance or catastrophic level of coverage.

**Crop Insurance Survey**  
**[www.WineAmerica.org](http://www.WineAmerica.org)**

In an effort to gain more information about how crop insurance does or does not work for our industry, WineAmerica has

posted a crop insurance survey on our web site. We ask that our members provide feedback on their experiences with the program and any concerns they may have. We will then take that information and use it to address the issues in discussions with RMA, as part of the Specialty Crops working group. It is hoped that these discussions will lead to a system that better serves the needs of growers.

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## Regulatory Tips and Tools — Use-Up Requests

**By Michael Kaiser**

From time to time wineries will submit labels that TTB rejects but that, for whatever reason (generally related to a business hardship), cannot be changed prior to resubmission. When this is the case, TTB will sometimes grant a “use-up” request for the particular label. A “use-up” request is technically a temporary approval of a label granted on condition that the winery will only use the label for a limited period of time (typically, six months), often for a specified, limited number of cases.

The review of labels by the TTB is not an exact science, and despite recent substantial efforts by TTB to simplify the process, human error – both by TTB and the wineries’ – is bound to play a role. The “use-up” can be a means to solve disputes between TTB and a winery in a relatively painless way. For instance, TTB may approve a label one year, and reject a similar or identical label the following

year. While the precedent established by an earlier approval should suggest that a subsequent rejection is a mistake, it isn’t always in the wineries’ interest to dispute TTB’s decision. In such cases, if the submitting winery can demonstrate that their business will be adversely affected without the label, TTB may grant a “use-up” request. This is the most common scenario under which a “use-up” may be granted.

A “use-up” might also be granted in other cases as well. For example, if a winery can demonstrate adverse consequences to their business without the label in question, and if they are selling only a limited quantity of the wine, a “use-up” may be an appropriate remedy. It is important to remember, however, that if a winery bottles their wine before receiving label approval, TTB may be less inclined to grant a “use-up” request.

The process for requesting a “use-up” requires a few steps. First, write a request letter to TTB explaining the need for the “use-up.” The letter should explain that the winery understands the label has been rejected and that they would like to sell their wine under the label for the time specified. The letter should also explain the business hardships that would result from a failure to obtain a “use-up” approval. Second, submit this letter and two copies of the rejected label back to TTB. This can be done through the WineAmerica label approval program. Once the request is submitted, we will fill out and submit the proper request form. If the “use-up” is granted, TTB will return the label with an expiration date and the number of cases the label may be used for. The submitting winery can then use this label up until the expiration date.

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## Introducing Cary Greene WineAmerica's new Vice President and General Counsel

WineAmerica is pleased to announce the addition of Cary M. Greene to our team. Cary will be our new Vice President and General Counsel. He previously worked for WineAmerica as a summer intern following his first year of law school. He is excited to return to WineAmerica in his new capacity. While a summer intern at WineAmerica, Cary, along with President Bill Nelson, co-authored an article on the components of a model winery law that appeared in *Vineyard & Winery Management*. Cary has also co-authored an article on First Amendment issues affecting the alcohol beverage industry that appeared in the Washington Legal Foundation's *Legal Backgrounder*.

Cary got his start in the wine industry working in the tasting room of *Jefferson Vineyards*, a Virginia-based vineyard and winery. Additionally, he was a contributing writer to the *Virginia Wine Gazette* where he updated readers on the events of the States' wine industry.

For the past four years, Cary has been an associate in the Washington, D.C. office of the law firm McDermott Will & Emery LLP. As a member of the firm's Alcohol Beverages & Products Practice Group, he concentrated his practice on winery law and regulation as well as trade practice and distribution. He served as moderator for a panel on direct shipment of wine, sponsored by WineAmerica, in advance of oral arguments on the subject before the Supreme Court. He has been a featured lecturer, for WineAmerica and others, on the regulation of wine in the wake of the Supreme Court decision, *Granholm v. Heald*.

Cary is admitted to practice law in Georgia and the District of Columbia.

### MARK YOUR CALENDAR!

#### 2009 Wine & Grape Policy Conference Washington DC

**March 22 - March 25 at the Grand Hyatt Washington.**

Call the hotel at 202-582-1234 or toll free 800-233-1234 and reference the Wine & Grape Policy Conference to reserve your room.

The rates are \$275 for single occupancy and \$300 for double occupancy.

Rooms fill up quickly in Washington,  
so please make your reservations as soon as possible!

More details will follow soon.