



WineAmerica Newsletter – September 2008

From The President's Desk

On complexity

Wine is not a product manufactured to specifications—it is a reflection of the qualities of the underlying fruit.

While that statement may seem obvious to all WineAmerica members it is clearly not universally understood by policy makers in Washington D.C. Hence the challenge to WineAmerica. As the national voice of American wineries we must educate agencies and Congress that policy changes which treat wineries like just another business making standardized products could have very serious negative consequences for six thousand farm based family businesses.

For the last six weeks I have been recruiting for WineAmerica on the West Coast. The key point made in those states, which all have strong state organizations, is the strong and overwhelming importance of having a national voice for wineries. Single states can be effective at expressing their interests, but only WineAmerica can speak and lobby on behalf of wineries throughout the country. WineAmerica is the only organization with grass roots winery support throughout the country. Thus support and

membership in WineAmerica is absolutely critical to protecting the policy environment for America's wineries.

One of WineAmerica's most important tasks is to educate agencies and Congress about the "DNA" of American wineries, to get them to understand the nuances and to appreciate the possible effects of their actions on the six thousand wineries in this country.

There is so much education to do. At the national level, policy makers often don't understand the nature of wineries. Wine is not a manufactured product produced to specification. Each lot is individual and derives its characteristics from the underlying grapes. For the most part, wine is not produced by large corporations in standardized lots, many times per year. The typical winery is a rather small, family run enterprise, making wine once a year from grapes they grow or from grapes grown by nearby vineyards. These grapes determine the character of the wines. Even very large wineries often operate in ways similar to the six thousand or so small wineries as they often encompass smaller entities within their umbrella producing small

individual lots and marketing those wines under brand names similar in size to family wineries.

During my travels I have heard much from wineries about their frustrations. Complexity in regulations is perhaps their biggest concern. This is especially true for direct shipment of wine. Yes, we have opened most of the country to direct shipment by wineries. But along the way the simplicity and ease of shipping under the reciprocal shipment regime has been lost and replaced by a bewildering and very difficult to manage patchwork of state requirements. Fixing this situation will take a lot of work.

Advances in direct shipment have come with a massive increase in complexity. Third parties like WineAmerica supplier Ship Compliant can help but even with their assistance, direct shipping has become a nightmare of layered and often confusing complexity.

Complexity in labeling is another great frustration. New rules requiring allergen and serving facts labeling are likely to further complicate the task of running a winery.

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From the President's Desk, continued

There is also great frustration with the three tier system. It is obvious that the nation's laws and the laws of the various states were not built to facilitate a national market for wineries who for the most part are small, cannot afford compliance officers, and are burdened by laws built, often in a very different era, for entities which are completely at variance with the now typical American small winery.

Why does this problem persist? Mostly these problems are part of

the massive hangover from prohibition, still not dissipated. The 21st Amendment upset the natural balance between state and federal laws governing business and commerce by placing extraordinary authority for regulation of commerce in wine, beer and spirits beverages in the hands of the states. The admirable aim of increasing supervision and preventing abuses gradually morphed into protection of in-state established and powerful

businesses, mainly distributors. Such favoritism for in-state businesses was exactly the kind of problem that bedeviled the United States under the Articles of Confederacy and ultimately led to the writing and adoption of the Constitution. Unfortunately, well meaning post prohibition political forces have created a state regulatory monster which will take much effort to tame.

Food Safety Issue Emerges as Congressional Priority

As Congress gets ready to return after its August recess, food safety concerns continue to be a front and center topic of discussion. The recent salmonella outbreak and the lengthy Food and Drug Administration and Centers for Disease Control (CDC) investigation that followed have kicked into high gear lawmakers' desire to fix what is considered by many of them to be a broken national food safety system. With their motivation to solve the problem comes a potential pitfall for the industry in the form of registration fees.

The Oversight and Investigations Subcommittee of the House Commerce and Energy Committee, chaired by Rep. Bart Stupak (D-MI), held another hearing on the topic just prior to summer recess. Alongside discussion of the recent salmonella outbreak also was

extensive mention of the Food and Drug Administration Globalization Act of 2008, drafted by House Energy and Commerce chairman Rep. John Dingell (D-MI). The intent of the legislation is to provide the FDA with funding and authority to adequately ensure the safety of the US food, drug, medical device and cosmetic industries.

Unfortunately, this draft legislation includes a requirement of an annual fee for all food production facilities—including wineries. Specifically, the bill proposes a \$2,000 registration fee on food facilities that would be adjusted each year for inflation with each re-registration after fiscal year 2009.

WineAmerica has been meeting with members of that subcommittee in an effort to secure an exemption from these fees in the final bill. To bolster the

industry's case for exemption, Congress is being made aware of the following points: 1) many wineries are small businesses that would find a \$2000 annual fee extremely onerous especially since it is not an expense that can be readily passed on to consumers; 2) wine does not pose a food safety risk because pathogens do not survive in wine and 3) the wine industry is regulated by the Tax and Trade Bureau (TTB) not the FDA, therefore the industry should not be paying fees to an agency that has no oversight.

In addition to Energy and Commerce, several other House committees have now put food safety on their "to-do" lists. The Horticulture and Organic Agriculture Subcommittee of the

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House Agriculture Committee, chaired by Rep. Dennis Cardoza (D-CA), also held a day-long on the issue prior to recess. The House Appropriations Committee had scheduled a hearing on the issue, but cancelled it at the last minute. It is anticipated that the committee will reschedule the hearing after members return in September.

Sen. Edward Kennedy (D-MA)

has put forward a food safety draft bill that also contains annual registration fees. This legislation differentiates between business sizes when determining fees. It proposes a fee of \$1,000 for businesses whose annual gross receipts are \$1,000,000 or greater; a \$500 fee for businesses whose annual gross receipts are less than \$1,000,000, but greater than \$250,000; and a fee exemption for

businesses whose annual gross receipts are less than \$250,000. Like Chairman Dingell's bill, these fees will increase and be adjusted for inflation each year after fiscal year 2009.

It is expected that Congress will make food safety legislation a very high priority when lawmakers return from recess. WineAmerica will continue its efforts to shape this legislation in a manner which prevents serious harm to wineries.

Regulatory Tips and Tools Labels with Organic Claims

Recently, more and more wineries have been making wine with organic grapes. This has been a new trend in the industry as more and more consumers have been making the switch to organic produce and other organic food products. If you are planning on making an organic wine, there are various federal regulatory guidelines that must be followed. They are:

- A phrase, such as "100% Organic" can only be used to modify the brand name as well as the class/type statement.
- If a wine is made with 100% organic grapes there can be no sulfite statement if there is less than 10 ppm. Lab analysis is required to be submitted with the COLA to show there is less than 10 ppm of sulfites.
- If an organic wine contains added sulfites, they must, at a minimum, label their wine as "Made with Organic Grapes (of other fruit)". The TTB will reject any label applications labeled differently. Acceptable variations are: "Made with Organically Grown Grapes," "Made with Organic Grapes from Our Vineyard," or "Made with Organically Produced Grapes." Wines that do not contain sulfites may be labeled this way as well.
- Use of an ingredient statement is permitted, only the grapes can be listed as organic. Example: Ingredients: Organic Grapes
- The wine must be certified organic by an approved state certifying agency. The label must also be approved by this agency, and the approval must be included with the COLA submission.
- The USDA Organic seal may be put in the label if the wine is made from 100% organic grapes. If it is less than 100% the seal is prohibited.

If you have any questions regarding organic claims, please contact Michael Kaiser, Manager of Regulatory Affairs.

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TTB Publishes Detailed New Circular on Alternating Premises

In order to clarify misconceptions about alternating premises and provide more guidance to wineries, TTB issued a new circular—2008-4 on August 18th. In their words the reasons for the circular are as follows:

“We want to ensure that alternating proprietors on winery premises fully understand TTB’s requirements for appropriate independence and segregation of operations regarding alternating proprietors. Failure to abide by these requirements creates delays in the examination of applications at the National Revenue Center (NRC) and in the field and, in ongoing wine operations, may result in adverse findings by the NRC or the field. Most often these failures relate to certain aspects of alternating winery operations. Examples of such problems include the use of permits by persons who are not engaged in the business of producing wine, underpayment of tax due to misuse of the small domestic wine producer tax credit, and mislabeling of wine.”

You can access the full circular at the following URL: http://www.ttb.gov/industry_circulars/archives/2008/ic2008_04.html

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