



WineAmerica Newsletter – September 2009

From The President's Desk

We made the move to new offices at the end of last week. There are plenty of details to attend to and lots of disruptions, but we are now functioning and settling in. The new offices have a conference room and more space in general so we are very pleased. Our new address is WineAmerica, 1015 18th Street NW, Suite 500, Washington DC 20036.

Food Safety

While this is supposed to be a slow time of year, we have in fact been quite busy. Food safety legislation is moving in the Senate (S. 510), having passed the House (H.R. 2749) in July. We are now lobbying the Senate to explain the importance of exempting alcohol beverages. So far we have good momentum and it looks like we will manage to be excluded from most of the food safety bill's substantive requirements including a potentially onerous and superfluous regulatory regime and associated fees. We may need our members to follow up and contact key Senators, so be on the lookout for requests.

WHO Draft Policy Statement on Alcohol Global Strategy

As we have been reporting throughout the past year, the World Health Organization (WHO), has been developing a "Global Strategy to Reduce Harmful Use of Alcohol." As a respected United Nations agency, WHO recommendations carry a great deal of weight. The final Global Strategy could guide country by country policy initiatives and set the parameters for alcohol policy for decades. There is now a draft of the Global Strategy in circulation.

It is not yet clear whether WHO will make an appropriate distinction between efforts to reduce the public health burden of alcohol consumption by focusing its policy initiatives on harmful use or whether it will make recommendations that affect all consumption and the marketing of alcohol generally.

The draft is a complex and thoughtful document which has both positive and negative elements. The glass half full part is that there are no draconian neo-Prohibitionist recommendations, at least not yet. The half empty part is that the old shibboleths like

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controlling availability, raising taxes, lowering driving blood alcohol content allowances and curtailing marketing all make an appearance in the document.

We can applaud the Global Strategies guiding principles:

“The protection and preservation of the health of the population by preventing and reducing harmful use of alcohol are a public health priority.”

But in a rather frightening way, the document “sets the scene” by stating:

“Alcohol is, however, a toxic and psychoactive substance that can lead to dependence, and its harmful use has serious effects on public health.”

“Harmful use of alcohol is one of the main risk factors for poor health globally. It compromises both individual and social development. It can ruin the lives of individuals, devastate families, and damage the fabric of communities.”

It is not yet clear whether WHO will make an appropriate distinction between efforts to reduce the public health burden of alcohol consumption by focusing its policy initiatives on harmful use or whether it will make recommendations that affect all consumption and the marketing of alcohol generally. As usual, the details will determine whether the policies are toxic to wine producers.

Here are some of the details from the draft with a focus on problematic areas (as stated in the draft):

- Establish a dedicated day or week at the national level for raising awareness and for prevention of harmful use of alcohol and related health and social consequences
- Strong evidence supports a sufficiently low level (0.05%) or lowering of limits for blood alcohol concentration as a central part of any concerted effort to reduce alcohol-related road-traffic injuries and fatalities. This action should be supplemented by strong enforcement including sobriety check points and random breath-testing.
- Restrict or ban direct or indirect marketing in certain or all media.
- Restrict or ban sponsorship activities that promote alcoholic beverages.
- Restrict promotions in connection with activities to which young people are responsive.
- Set up effective administrative and deterrence systems for infringements on marketing restrictions.
- Increasing the price of alcoholic beverages is one of the most effective interventions to reduce harmful use of alcohol.

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- Tax alcohol in proportion to the alcoholic content of the beverage or on the basis of the type of beverage.
- Regularly review prices in relation to level of inflation and income.
- Benchmark alcohol prices with basic commodities.
- Impose extra taxes on alcoholic beverages that might have a special appeal to adolescents.”

We can take heart from the following, reasonably balanced statement providing rationales for harm-reduction approaches:

“Harm-reduction measures have the potential to prevent and reduce the negative consequences from alcohol consumption without specifically aiming at – nor necessarily reducing – the consumption of alcohol itself. The starting point for this approach is the recognition that people are drinking alcohol, and the focus is on how the potential negative consequences of that drinking can be prevented or reduced. There is a potential large public health gain from successfully reducing the level of, or health consequences from, intoxication and heavy drinking and changing the drinking context, especially since the behaviours being targeted commonly harm people other than the drinker.”

As we seek to moderate the recommendation before final adoption next May, WineAmerica will be meeting with other alcohol producer groups over the next few months.

Excise tax and Health Care

WineAmerica has frequently made the point that heavy drinkers are less affected by increased prices than moderate consumers. It is an important point because it raises the possibility that increasing alcohol “sin” taxes might have a consequence of increasing health care costs rather than reducing those costs since moderate consumers generally have more healthy outcomes than abstainers. A new working paper published by the National Bureau of Economic Research—[Sin Taxes: Do Heterogeneous Responses Undercut Their Value?](#) (NBER #15124 July 2009) suggests that “higher prices could fail to curb drinking by those most likely to cause negative externalities.” In other words, this is more support for the idea that heavy, abusive drinkers do not seem to be much affected by increased prices.

Wine Export Seminar.

The Alcohol & Tobacco Tax & Trade Bureau (TTB) and WineAmerica are sponsoring a one day “How to Export Wine” seminar for state winery association leaders. The goal of the seminar is to provide an overview of Federal wine export resources and give state representatives practical tools to allow them to better assist wineries, especially small wineries, with wine exports. The all day Seminar will be held in Washington, D.C. on October 27, 2009.

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We have sent notices about this program to all members of the State Associations Council. The basic approach of this joint seminar is to get representatives from as many states as possible, who can then help wineries in their state interested in developing exports. This seminar will provide practical information about how to go about exporting.

Membership Campaign

WineAmerica is beginning a new campaign to increase its membership. It will be based on peer to peer contact with a focus on fairly sharing the burden of representing all American wineries in government affairs. In addition, member wineries stand to benefit from WineAmerica discounts with our various suppliers such as FedEx, ShipCompliant and Heartland financial services.

Please talk to all your fellow wineries about the importance of supporting WineAmerica.



From The Grassroots

by Jennifer K. Montgomery

This column chronicles the state-to-state travels of Jennifer Montgomery, Director of Grassroots & Political Affairs. When not on Capitol Hill, Jennifer spends much of her time in the states in an effort to get to know each state industry individually and learn first-hand what issues and challenges they face.

Illinois

In June, I attended a board meeting of the Illinois Grape Growers & Vintners Association. While there, I gave an update on pressing federal issues that WineAmerica is working on and asked for grassroots outreach from the industry to the Illinois congressional delegation, which they were happy to help with. I also learned about the challenges facing the Illinois wine industry in dealing with state funding decreases and increased excise taxes.

The industry has shown excellent growth with nearly 80 wineries state-wide with more on the way.

Tennessee

Also in June, I traveled to a Tennessee Farm Wine Growers Association meeting near Nashville. There was great participation by the industry with representatives from more than 20 vineyards and wineries in attendance. Having just been successful in securing direct shipment, they discussed ideas for other legislation to pursue during the next session of the state legislature. Afterwards, I visited several of the wineries in the Nashville area including Beachaven Vineyards— a longtime member of WineAmerica.

Tennessee has approximately 30 wineries and expects that recent legislative successes will enable those numbers to increase.

Iowa

As the August recess got into full swing, I headed to the Midwest to experience the Iowa wine industry exhibit at the Iowa state fair. Hosted by Bob Wersen of Tassel Ridge

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Winery, I met with state industry leaders, the director of the Midwest Grape and Wine Industry Institute at Iowa State University and participated in a public radio interview.

The state now has 70+ wineries and continues to move forward with focus and positive energy.



Legal Notes – Protecting Your Business in an Evolving Wine Shipping Market

by Cary M. Greene

At the end of July, the Virginia Alcoholic Beverage Control Commission issued a Circular that could have a substantial impact on marketing and logistics in the direct-to-consumer shipping market. Virginia put its direct shipper licensees on notice that they could not ship wine to consumers through “third parties such as fulfillment warehouses, marketing companies, or other businesses to receive or ship orders for them.” Virginia is the second state to publish such a Circular—California issued a similar Industry Advisory in June—and it is a stark reminder of the dangers of treading too far into uncharted waters in the fast evolving direct-to-consumer shipping market.

Throughout August, we worked with the Wine Institute and the Virginia Wineries Association to reduce the impact of this Virginia ruling for our members. We may yet succeed in pushing back the effective date of Virginia’s Circular to sometime next spring. Nevertheless, the issue of the involvement of “third parties” in direct-to-consumer shipping is not likely to go away anytime soon.

Wineries...must carefully examine the business practices of potential outside service provider partners.

Despite a Supreme Court ruling and winery shipping laws in 38 states, direct shipping is viewed, for a variety of reasons, with a strong dose of suspicion by most state ABCs. Regulators generally want some measure of market transparency—clear and simple transactions they can follow from beginning to end. Because it is axiomatic in alcohol beverage law that if a transaction is not permitted, it is prohibited, regulators in an alcohol beverage context have the power to turn a desire for market transparency into enforceable rules. As a result, non-conforming transactions that don’t fit within a proscribed regulatory scheme are not simply suspect, they’re potentially illegal.

It is understandable that wineries and outside service providers would try to use market solutions to make wine direct shipping simpler and more profitable. After all, in most business contexts, if a business model isn’t working, you try another. But alcohol beverage law isn’t oriented toward allowing businesses to develop market solutions for

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their problems. Wineries and other businesses may only ship wine direct-to-consumers within the confines of the complex system as it exists, even where that system is expensive and difficult to manage.

Wineries, in other words, must carefully examine the business practices of potential outside service provider partners. If a business is pitching you to provide logistical or other support in your direct shipping operations, there are at least three issues to consider:

First, most states that allow direct shipping require each direct shipper to be licensed separately. The idea of businesses pooling together to get a joint license isn't really contemplated by most state direct shipping laws, nor do most state laws account for wineries shipping their products through the license of an outside service provider. These practices would be seen by most state regulators as trying to get around inconvenient state law, and supported at best by a shaky legal foundation. Whether you're making one shipment and paying 17¢ in sales and excise taxes or making hundreds of shipments and paying \$500, regulators typically apply the rules uniformly.

Second, a transaction involving an outside service provider may affect laws in your state in ways you have not anticipated. For instance, passing title directly to an on-line retailer at your winery before a wine is packed and shipped to a consumer may violate your state's laws: (1) if self-distribution is prohibited where you operate, a sale to a retailer on your premises—even for shipment out-of-state—may be a violation of your winery license; and (2) even if your winery license allows you to self-distribute, you may only be permitted to sell to a retailer licensed in your state.

Third, transactions involving an outside service provider may affect the laws of the state you're delivering to. In Virginia, the state ABC is claiming that a Virginia direct shippers license is tied to a particular location—meaning that orders must be taken, packed at, and shipped from the licensed location, and no where else. This would prohibit using off-premise warehouseman to pack and ship on your behalf. In addition, many states have what are called “at rest” provisions, requiring alcohol beverages to “come to rest” at a specified location. In the case of direct shipment transactions involving on-line retailers, this potentially means that the retailer shipper must take possession at a set location within the delivery state before a wine can be delivered to the consumer.

There are many reputable shipping businesses that take compliance with respect to direct shipping transactions seriously, but this is not universally true. We suggest working with valued WineAmerica “supplier member” partners, such as ShipCompliant, Inertia, and Compli, to make sure your operations conform to the law.

WineAmerica will continue working with our friends at the state and federal level to try to simplify and reduce the cost of direct shipping. Until the law changes, however, we urge you to make sure you are shipping in ways that protect your hard earned business reputation. It is simply not worth the consequences to get out too far ahead of the law.



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WineAmerica Fall Board of Directors and Membership Meeting Registration

WineAmerica is excited to announce the start of registration for the 2009 Fall Board of Directors and Membership Meeting. This November we will be heading to the Fredericksburg, Texas in the Texas Hill Country. Fredericksburg is roughly 80 miles from both Austin and San Antonio.

The meeting will be held from Monday, November 16 through Wednesday, November 18 at the Inn at Barons Creek. WineAmerica has secured a room block and reservations can be made by calling the hotel at 866-990-0202. The rooms must be reserved by October 16. When booking be sure to mention you are calling for the WineAmerica meeting.

Meeting registration information is located on the WineAmerica website together with a preliminary agenda.

Please contact Michael Kaiser at labels@wineamerica.org with any questions regarding the WineAmerica Fall Board of Directors and Membership meeting and stay tuned for further updates.

PRELIMINARY AGENDA

Monday, November 16

9:00am -5:00pm **Executive Committee Meeting**
6:00 - 7:30pm **Welcome Reception: Taste the Wines of Texas**

Tuesday, November 17

8:30am - 10:00am **Board Meeting**
10:00am - 12:00 pm **Policy Discussion**
12:00pm - 1:30pm **Lunch**
1:30pm - 2:45pm **Panel Discussion**
3:00pm - 5:00pm **Policy Discussion Continued**
6:00pm - 9:00 pm **Wine Tasting and Dinner: Grape Creek Vineyards**

Wednesday, November 18

8:00am - 12:00pm **State Associations Council Meeting & State Policy Update**