



WineAmerica Newsletter—September 2010

From the Chief's Desk

With harvest in full swing and the Hill quiet for the first time in months due to the August recess, we've been focusing on our grassroots the last few weeks, and how to make WineAmerica a stronger more effective organization. We've been mulling over who we are and why we're here, and wondering how we can convince wineries that aren't members of WineAmerica that it's time to join. My apologies in advance if some of this is old hat.

What makes WineAmerica different from other alcohol producer trade groups in D.C. is the fact that we are built on a foundation of local wineries located in nearly every Congressional district in the U.S. Our grassroots are deeper and more comprehensive than virtually any other alcohol trade group. This makes us valuable as a voice for the issues affecting American wineries since we can walk into almost any state legislature or any federal Congressional office and talk about the local winery that will be helped or harmed by a particular policy and how this reflects a broader industry of 6,700+ wineries nationwide.

As state industries have matured in the West, East, Midwest, Southeast, Rocky Mountains, and Southwest, our voice has only gotten more effective. But it can and should be far louder. Until we get buy in from *every* American winery—until the cost of WineAmerica membership is viewed as a cost of doing business rather than an option—we will not reach our potential as an organization.

As an industry, we cannot afford to leave policy to chance and hope that regulatory and tax legislation will remain favorable, and that anticompetitive state barriers to sale and distribution will be reduced and rationalized. It's smart business to proactively defend hard-fought policy improvements, and to fight unfair laws that limit our ability to get our products to market. WineAmerica membership is far cheaper than the thousands in taxes and fees that had a solid chance of becoming law, or which have been repealed—think the \$500 per facility special occupational tax—as a result of WineAmerica's efforts over the years.

Waiting till next year is fine when your favorite baseball team is in the cellar, but your cellared wine may turn to vinegar because you're not minding the regulatory environment this harvest as closely as you monitor your cellar's temperature and humidity. Favorable policy can disappear with a key stroke. Privileges wineries depend on for profitability can be easily taken away. Investing in WineAmerica membership is the way to monitor the policy climate, and prevent the unforeseen loss of privileges.

For example, in the recent H.R. 5034 fight, we've been able to effectively reach Congressional offices no other producer group could reach. Our local grassroots have given our producer trade group coalition a better shot at defeating this harmful federal bill, but as our industry matures we can and should do better.

CARE Act (H.R. 5034)

We've been hearing rumors of a redrafted bill and a possible September Judiciary Committee hearing for several months, but with the legislative calendar getting shorter and no redrafted bill yet made public, we're beginning to wonder whether September may come and go without a hearing. There's always a chance, but at this point we would have extremely short notice and little ability to prepare, and given warnings against H.R. 5034 voiced by the Federal Trade Commission ("FTC")—see the next paragraph—the chance of a hearing this month seems more remote. Still, the bill is a dangerous piece of legislation and wholesaler groups have put a lot into it, so we have no expectation (yet) that this will end quietly.

In August, FTC released a Working Paper expressing doubts about the wisdom of H.R. 5034 (*available at* <http://www.ftc.gov/be/workpapers/wp304.pdf>). The basic argument is that state wholesaler protections, specifically "post and hold" laws like the one struck down in *Costco*, but also wholesaler protections generally (there's a brief mention of monopoly protection laws, a.k.a. "franchise" laws, as well as exclusive territory laws) are anticompetitive and harmful to consumers. FTC concludes that while wholesaler protections may reduce overall consumption, they *do not* promote temperance since they have "no measurable effect" on problem drinking, specifically "drunk driving accidents and various measures of teen drinking."

In other words, since the benefits of wholesaler protections are minimal and theoretical and the harms to consumers are substantial and measurable, H.R. 5034 is a bad idea. The basic purpose of the bill is fundamentally flawed since federal antitrust laws banning anticompetitive wholesaler practices *should* trump theoretical Twenty-first Amendment justifications. FTC states:

...our results cast serious doubt on the wisdom of any legislative attempts to increase the difficulty of mounting antitrust challenges to [post and hold] laws, since successful antitrust suits are likely to improve consumer welfare.

This is strong medicine, and not easily ignored.

Food Safety

The Senate published a Manager's Package for the food safety bill, S. 510, this month. As a brief refresher, a food safety bill has been kicking around Congress for more than a year. Early momentum was a response to spinach and peanut recalls brought about because of salmonella problems. Since the House bill passed last year, H.R. 2749, was focused on pathogenic risk, we argued that wine should be exempt from the bill as inclusion might unnecessarily shift the regulation of alcohol safety from the Alcohol & Tobacco Tax & Trade Bureau ("TTB") to the Food & Drug Administration ("FDA").

In our May 2010 newsletter, we reported that "[t]he 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 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."

With the publication of the S. 510 Manager's Package, we can say confidently that the language is what we had hoped it would be. Momentum is building as a response to recent egg recalls (salmonella again) and, given the bipartisan nature of the bill, there seems to be a good chance of passage this session.

If you haven't printed out a copy yet (<http://www.ttb.gov/pdf/compliance-seminar.pdf>), TTB has published its 2010 compliance guide for wineries. The guide simplifies TTB regulation down to its essence, and is an excellent resource to help wineries remain compliant with federal regulation.



Grassroots Update on HR 5034

Jennifer K. Montgomery

WineAmerica continues its focus on grassroots efforts to defeat H.R. 5034. Since the legislation was introduced in April, we have reached out via staff, our State Associations Council and individual wineries to register our opposition to the bill in more than one-third of House districts. Since this does not include the August recess push made by our members, we expect that number to be significantly higher by the time Congress reconvenes next week.

Some of the additional grassroots initiatives WineAmerica has participated in or directed in the past four months in opposition to H.R. 5034 include:

Since [H.R. 5034] was introduced in April, we have reached out . . . to register our opposition to the bill in more than one-third of House districts.

- Recruited local members to lend their names to op-eds in key Congressional House districts to run during the Memorial Day recess. These included districts in Michigan, New York and Virginia.
- Provided assistance in securing grassroots outreach to Attorneys General (“AGs”) in Idaho, Missouri, Virginia and Washington. Each of these AGs wrote letters explaining that “states’ rights” and H.R. 5034 are separate issues—that the appearance of their signatures on a March 2010 National Association of Attorneys General letter supporting state regulation of alcohol should not be taken as support for H.R. 5034.
- Assisted with targeted grassroots outreach to Senators in Idaho, Iowa, Maryland, and Missouri. This effort will become more widespread if/when H.R. 5034 is introduced in the Senate.
- Built a state wine industry coalition to oppose H.R. 5034 in partnership with the Wine Institute.

Given WineAmerica’s ability to mobilize and drive grassroots outreach all across the country, our organization is in a unique position to affect positive change and play a significant role in deflecting this latest threat to our members and their livelihoods. And while the bill is temporarily stalled, it is by no means dead. Therefore our efforts will continue until this threat is negated.



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

PHONE: 202-783-2756

FAX: 202-347-6341

EMAIL:

Staff Contacts

Cary Greene

Chief Operating Officer &
General Counsel

cgreene@wineamerica.org

Jennifer Montgomery

Dir. of Grassroots & Political
Affairs

jmontgomery@wineamerica.org

Michael Kaiser

Manager of Regulatory Affairs

labels@wineamerica.org

WineAmerica Fall Meeting

By Michael Kaiser

The 2010 WineAmerica Fall Board of Directors and Membership Meeting is rapidly approaching. We are excited to be going to Dobson, North Carolina this year.

The meeting will be **November 8-10, 2010** at the Hampton Inn and Suites at Shelton Vineyards, Dobson, North Carolina. You can book a room by calling 336-353-9400. Rooms are \$104 plus tax. Reference the WineAmerica Fall Meeting to get the special rate. The cutoff date for the room block is October 24, 2010. Hotel rooms fill up fast. Please make your hotel reservations before this date!

Formal meeting registration will be available via the WineAmerica website in mid-September, but we encourage you to book your room now.

Preliminary Agenda

Monday, November 8

10:00am - 5:00pm	Executive Committee Meeting
6:00 - 7:00pm	Welcome Reception: Shelton Vineyards
7:00 – 10:00pm	Dinner at the Harvest Grill at Shelton Vineyards

Tuesday, November 9

8:30am - 10:00am	Board Meeting
10:30am - 12:00pm	Policy Discussion
12:00pm - 1:15pm	Lunch (Speaker to be Determined)
1:30pm - 2:00pm	Panel Discussion (tentative)
2:00pm – 3:00pm	Future of WineAmerica Workshop & Discussion
3:30pm - 4:00pm	Travel to Surry Community College
4:00pm - 5:30 pm	Tour at Shelton-Badgett Center
5:30pm - 8:00pm	Taste the Wines of North Carolina Reception & Dinner

Wednesday, November 10

8:00am - 12:00pm	State Associations Council Meeting & State Policy Update
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*** Please contact Michael Kaiser at mkaiser@wineamerica.org if you have any meeting questions.*