WINE INSTITUTE

**Robert P. Koch**
**PRESIDENT AND CHIEF EXECUTIVE OFFICER**

April 12, 2005

Mr. John Manfreda
Administrator
Alcohol and Tobacco Tax and Trade Bureau
U.S. Treasury
1310 G Street, NW
Washington, DC 20220

Re: **Vintage Date Regulation**

Dear Mr. Manfreda:

This is a petition to change rules filed pursuant to the authority of 27 CFR § 70.701. Wine Institute is the public policy trade association of California wineries. Our over 800 member wineries and affiliated businesses produce about 80% of all wine made in the United States. We submit this rulemaking petition following five years of discussion within our membership on the issue of vintage date requirements. We believe the regulatory change sought is necessary to permit U.S. wineries to compete fairly in the world marketplace.

## Section of Regulations Involved:

Pursuant to 27 CFR Section 70.701, we are identifying the section of the wine labeling regulations that we desire changed as 27 CFR § 4.27. This section contains provisions and requirements for stating a vintage date on wine labels. While there are additional regulations in other sections of 27 CFR Part 4 that prohibit any other statement of age, we are only proposing a change in Section 4.27.

Section 4.27 provides the circumstances for the appropriate use of vintage dates on wine labels. The section defines "vintage wine" as wine labeled with the year of harvest of the grapes, generally requiring that 95 percent of the wine be derived from grapes harvested in the labeled calendar year (the "95% requirement"). The section further requires that imported wine bearing a vintage date must comply with the 95% requirement.

## Action Requested:

Wine Institute seeks by this rulemaking petition to modify subsection (a) of Section 4.27. Where the subsection currently requires that 95% of the wine must have been derived from grapes harvested in the labeled calendar year, we propose that the subsection be changed to permit wine labeled with a state, multi-state, county, or multi-county appellation of origin to bear a vintage date if at least 85 percent of the wine is derived from grapes harvested in the labeled calendar year. Wine labeled with a viticultural area appellation of origin, would be allowed to bear a vintage date if at least 95% of the wine has been derived from grapes harvested in the labeled calendar year as it is currently. We have made changes so that the percentage requirement would apply to foreign equivalents of states or counties.

We mention here that this position is a compromise[1]. Originally, Wine Institute considered a proposal that would change the vintage date percentage to 85% for all wines, but the governing Board of Directors of Wine Institute was deadlocked on this proposal. In reconsidering the issue, the Board agreed to the current position, which is based in part on the current regulatory requirements that draw a distinction between state and county appellations of origin and American Viticulture Area appellations of origin[2].

We propose that the section be amended as follows:

Sec. 4.27 Vintage wine.

(a) General. Vintage wine is wine labeled with the year of harvest of the grapes made in accordance with the standards prescribed in classes 1, 2, or 3 of Sec. 4.21. **If labeled with a state, multi-state, county, or multi-county appellation of origin (or its foreign equivalent), at least 85% of the wine must have been derived from grapes harvested in the labeled calendar year. If labeled with a viticulture area appellation of origin (or its foreign equivalent),** ~~A~~**a**t least 95 percent of the wine must have been derived from grapes harvested in the labeled calendar year.~~,~~ ~~and the w~~**W**ine must be labeled with an appellation of origin other than a country (which does not qualify for vintage labeling). The appellation shall be shown in direct conjunction with the designation required by Sec. 4.32(a)(2), in lettering substantially as conspicuous as that designation. In no event may the quantity of wine removed from the producing winery, under labels bearing a vintage date, exceed the volume of vintage wine produced in that winery during the year indicated by the vintage date.

(b) American wine. A permittee who produced and bottled or packed the wine, or a person other than the producer who repackaged the wine in containers of 5 liters (or 1-gallon before January 1, 1979) or less may show the year of vintage upon the label if the person possesses appropriate records from the producer substantiating the year of vintage and the appellation of origin; and if the wine is made in compliance with the provisions of paragraph (a) of this section.

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[1] Wine Institute considered a number of other solutions to the varietal percentage inequities, including petitioning for multi-vintage labeling. As with ATF's rulemaking efforts with respect to multi-vintage labeling that were withdrawn with the publication of Notice No. 529 on May 18, 1984 (49 FR 21083), there was little in the way of a positive response to this suggestion. Likewise, a suggestion that Wine Institute demand stricter enforcement by TTB of the 95% vintage labeling requirement for imported wines was not viewed as a viable solution.

[2] 27 CFR Section 4.25a entitles a U.S. wine to an appellation of origin of a state or county if, among other things, at least 75 percent of the wine is derived from fruit or agricultural products grown in the appellation area indicated (27 CFR Section 4.25a (b)(1)(i)) but entitles a U.S. wine to an American Viticulture Area appellation of origin only if not less than 85 percent of the wine is derived from grapes grown within the boundaries of the viticulture area (27 CFR Section 4.25a (e)(3)(iii)).

> (c) Imported wine. Imported wine may bear a vintage date if: (1) It is made in compliance with the provisions of paragraph (a) of this section; (2) it is bottled in containers of 5 liters (or 1-gallon before January 1, 1979) or less prior to importation, or bottled in the United States from the original container of the product (showing a vintage date); (3) if the invoice is accompanied by, or the American bottler possesses, a certificate issued by a duly authorized official of the country of origin (if the country of origin authorizes the issuance of such certificates) certifying that the wine is of the vintage shown, that the laws of the country regulate the appearance of vintage dates upon the labels of wine produced for consumption within the country of origin, that the wine has been produced in conformity with those laws, and that the wine would be entitled to bear the vintage date if it had been sold within the country of origin.

This change would, in effect, change the vintage date percentage for wines bearing a state, multi-state, county, or multi-county appellation of origin from 95% to 85%, while maintaining the 95% vintage date requirement for wine labeled with a viticultural area appellation of origin.

## Reasons for Change:

### *Fair and Open Competition*

Wineries compete at many different levels: price, quality, value, reputation, among other things. Competition comes from wines produced in another county, another state, another country. There are various factors that lead to success, but every winery should be able to compete fairly.

Current regulation requires that wines entering into the United States must meet the 95% vintage date requirement[3], but we know in our discussions with wineries in other countries that this standard is not routinely adhered to. In briefly reviewing TTB's regulatory actions over the past several years, we are unaware of any enforcement action taken by the agency against a winery for vintage date violations, either against a domestic or foreign winery.

We appreciate the enforcement difficulties and costs involved in a prosecution for vintage date violations by foreign wine producers. Compared to the records maintained by basic permittees that are readily available to TTB, evidence is not always as accessible or even procurable from foreign sources to validate label claims. These evidentiary difficulties, along with the lack of reliable scientific tests to determine vintage date percentage compliance, make the efficacy of the regulation requiring imported wine to comply with the 95% vintage date requirement illusory. While basic permittees in the United States can have their records inspected at any time by TTB officials, Wine Institute realizes that inspection of records of a foreign winery is not within the budget or enforcement purview of TTB. While the U. S. vintage date requirement has no effect outside the country, neither does it have much of an effect on wines entering into the country from abroad. This absence of enforcement presence with respect to vintage date percentage compliance creates a wine market in the United States that is unbalanced. This imbalance leads to an uneven competitive environment, disadvantaging those winemakers in countries that have higher vintage date percentages, such as the United States, for competing fairly.

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[3] 27 CFR Section 4.27

U. S. consumers are increasingly purchasing these wines over U. S. wines. These wines can take advantage of the technical benefits of a lower vintage date percentage[4]. While U. S. wineries must adhere to a very strict 95% vintage date requirement, much of the rest of the world is producing wine at an 85% vintage date or less (see table below) and, we believe, shipping such products into the United States at these lesser percentages.

## Vintage Date Percentages of Major Winemaking Countries

| Country | Minimum quantity of grapes from a given vintage in order to be labeled with that vintage date | Reference |
|---|---|---|
| USA | 95% | 27 CFR Ch.1 § 4.27 |
| Canada | | No national wine standard, however, provincial Vintners' Quality Alliance regulations state 95% |
| Australia | 85% | AWBC Act Sheet 40H (1) & Regulation 22). |
| New Zealand | 85% | ANZFA Standard P5 and P6 |
| European Union | 85% | EU Regulation: 1493/99, Annex VIII, E.7 |
| Chile | 75% | Official Gazette of the Republic of Chile/ Viñas De Chile: Decree 464, Article 5 |
| South Africa | 75% | Wines of South Africa: labeling requirements (South Africa) paragraph 14; Cape Wine and Spirits Institute |

It is clear that the requirements in the United States are significantly different than those of all the other countries listed. When the top ten producers of wine are considered (2001 data) this means that at least 82% of the wine they produce (and probably more) is made under regulations that are less restrictive than those that apply in the U.S. Likewise, at least 90% of the wines exported from the top ten exporters are made under less restrictive regulatory regimes:

[4] In its Agricultural Import Commodity Aggregations report published by the United States Department of Agriculture's Foreign Agricultural Service, for example, Australia's wine imports into the U.S. shows a percent change of **+19.88%** from the calendar year 2003 to 2004. Australia's vintage date percentage is set at 85%. Likewise, Spain's percent gain for the same period, according to the FAS, is listed at **+14.36**. Spain's vintage date percentage is 85%.

| | **Producers** (volume in MMgal) | **Exporters** (volume in MMgal) | **Importers** (volume in MMgal) |
|---|---|---|---|
| 1 | France (1410) | Italy (388) | Germany (310) |
| 2 | Italy (1323) | France (400) | UK (268) |
| 3 | Spain (864) | Spain (263) | France (136) |
| 4 | USA (507) | Australia (99) | USA (124) |
| 5 | Argentina (418) | Chile (81) | Japan (85) |
| 6 | Australia (269) | USA (75) | Russia (68) |
| 7 | Germany (235) | Germany (64) | Belgium (67) |
| 8 | Portugal (206) | S. Africa (47) | Netherlands (65) |
| 9 | S. Africa (171) | Portugal (44) | Canada (63) |
| 10 | Chile (149) | Moldova (36) | Denmark (54) |

Source: ***The State of Vitiviniculture in the World and the Statistical Information in 2001, O.I.V.***

These regulatory differences are significant in terms of their impact on wine quality, and therefore competitiveness at a given price point.

## *US Winemakers at a Technological Disadvantage:*

The vintage percentage differences between the U.S. and other wine producing countries with a lesser percentage level places the U.S. winery at a technological disadvantage. When making mid-range wines, where consistency of flavor and mouthfeel is desirable between years and where a large proportion of the global wine market exists, there is considerable winemaking advantage in being able to use either a younger or older wine in a blend. For instance, 15% of a wine from an older riper vintage will assist in achieving a style target when the current vintage has produced thinner, more acid wines. An 85% vintage date regulation, as proposed, would lead to improved taste appeal and quality perception of many wines. Young red wines would be smoother and less “green” and would be more consistent across vintages. Older white wines would be fresher and fruitier and more consistent across vintages as well. In the end, consumers would benefit from the U.S. winemaker’s ability to produce better quality wine at the same cost.

The differences in vintage date percentages result in a direct impact on the quality and cost of U.S. wine and influences the purchase of U.S. wine at all price points. American winemakers are thus at a considerable disadvantage compared to their colleagues in most of the world’s major wine producing countries in being able to use only 5% of wine from another vintage in the blend. The outcome is that U.S. wineries are placed at a competitive disadvantage in the global market because they are unable to make wines of consistent quality at a given price point as compared to other countries with a lower vintage date percentage requirement.

## *US Winemakers at an Economic Disadvantage:*

Not only does the imbalance in vintage date percentage requirements directly impact the consumer’s perception of price/value, it economically impedes the efficiency of those California wineries that maintain separate tanks for older vintages, increasing production costs for these wineries over those in other countries. Global competition need not invest in as much cooperage as these California wineries since they do not require as many additional tanks for older vintage inventory. This less efficient tank utilization could compel some California wineries to make greater capital investments in new storage. With a change in the regulation as proposed, better tank efficiency would lead to lower production costs for these wineries, which will support more competitive pricing. A sampling of major California Central Valley wineries indicates that tank utilization under an 85% vintage date rule would be improved by 6%.

## *Establishing a Baseline Vintage Date Percentage Benefits The U.S Wine Industry*

The regulatory change proposed would establish a needed and important baseline vintage date percentage requirement that is more consistent with world standards. It would allow California and other U.S. wineries to compete more openly and fairly because the economic and technological advantages of a lower percentage vintage date requirement will be neutralized and will allow U.S. wineries to once again compete fairly based on price and quality. Wine Institute's proposal would not preclude wineries from producing vintage wine using higher percentages, and it would not prevent wineries that choose to do so from marketing their wines based on these higher percentages. What the change accomplishes is a leveling of the playing field with respect to vintage labeling standards, and the establishment of a vintage date percentage that is more in keeping with the world market.

Respectfully submitted,

Robert Koch
President, Wine Institute