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Nat DiBuduo

January 9, 2018

Amy Greenberg  
Regulations and Rulings Division  
Alcohol and Tobacco Tax and Trade Bureau  
1310 G Street, NW, Box 12  
Washington, DC 20005

RE: Docket No. TTB-2016-0005; Notice No. 160B; RIN 1513-AC27

Dear Ms. Greenberg:

The California Association of Winegrape Growers (CAWG) is a statewide not-for-profit trade association established in 1974 for the purpose of serving and representing the interests of California's winegrape growers. On behalf of California winegrape growers, CAWG respectfully offers the following comments on Notice No. 160B, *Proposed Revisions to Wine Labeling and Recordkeeping Requirements; Comment Period Reopening*.

**Industry Discussion with TTB Needed**

In previous comments, dated December 7, 2016, CAWG requested the Alcohol and Tobacco Tax and Trade Bureau (TTB) withdraw its proposed rule and begin a dialog with interested stakeholders in order to craft a fair and balanced regulatory solution that addresses the original concerns that gave rise to Notice No. 160. While CAWG appreciates TTB's interest in collecting additional information through Notice No. 160B, we believe the complexity and economic significance of the issues associated with TTB's original regulatory proposal and the subsequent proposal contained in Notice No. 160B merit a level of discussion between industry and TTB that cannot be had through traditional notice and comment rulemaking. Consequently, CAWG urges TTB to initiate a negotiated rulemaking.

CAWG believes a negotiated rulemaking, a consensus based process, would deliver an acceptable regulatory solution based on a clearer understanding of the concerns of all those affected. This process would give everyone with a stake in the issues raised in Notices No. 160 and 160B the chance to reach agreement about the main features of a rule before it is proposed in final form.

CAWG PROTECTS AND PROMOTES THE INTERESTS OF CALIFORNIA WINEGRAPE GROWERS BY PROVIDING MEMBERS A UNIFIED VOICE, EFFECTIVE ADVOCACY AND STRONG LEADERSHIP.

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Before commenting on specific aspects of the proposal contained in Notice 160B, we wish to reiterate our concern stated in earlier comments that TTB has failed to offer a clear, detailed explanation of the problems associated with the production, marketing and sale of wines covered by certificates of exemption from label approval (hereinafter referred to as an exempt-COLA). Specifically, how do exempt-COLA wines undermine existing appellations of origin and American Viticultural Areas (AVAs)?

We find it difficult to judge the merits of specific proposals to more strictly regulate exempt-COLA wines when TTB has failed to specify the harm caused to industry operators or consumers. However, we do know that shipments of fresh California winegrapes to out-of-state wineries is significant and the proposals contained in Notices No. 160 and 160B may disrupt such shipments, which we believe represent more than \$20 million in value.

### **Specific Comments on Proposal Contained in Notice No. 160B**

CAWG appreciates the opportunity to provide specific comments on the four-part proposal offered in Notice No. 160B.

- 1) Proposed: All wines identified with an AVA name or appellation of origin should be subject to the same Federal standards.

CAWG Comments:

- a. We believe such a proposal would substantially devalue California grapes purchased by many wineries with exempt-COLAs located outside the state of California, and result in significant economic losses for the California growers supplying those grapes.
  - b. The proposal represents a substantial change to the current system of disclosing grape source information on wine labels. The proposal asserts all wines identified by the name of an AVA or appellation ought to be subject to the same federal standards, but the proposal, in fact, would establish a dramatically different regulatory scheme for wines labeled with the U.S. appellation. And, it is unclear whether the proposal is intended to apply to all wines subject to labeling under the Federal Alcohol Administration Act.
- 2) Proposed: Grape source information may be included on COLA-exempt wines, provided it includes the county or counties and state or states, or just state(s), where the grapes are grown; the percentage (with a tolerance of +/- 2 percent) of wine derived from grapes grown in each county or state shown on the label; and city and state, or just state, where the wine was finished.

CAWG Comments:

- a. It is unclear to us why the proposed grape source naming convention is strictly limited to counties and states. Wineries outside of California who buy and use California winegrapes should be permitted to make truthful, accurate statements regarding the source of the grapes used. We believe there should be a clear explanation as to why geographic source indication would be limited solely to areas defined by political and administrative units, specifically counties and states. Have

other political boundaries been deemed unacceptable, i.e., hamlets, boroughs and cities? If so, why?

- b. Some California counties are better known than others. Some California counties, particularly those that enjoy high rates of tourism, like Monterey, Napa and Santa Barbara, likely have greater name recognition with consumers than many other California counties with less tourism. Consequently, numerous growers in less well-known counties, like San Joaquin or Yolo, would prefer that out-of-state wineries producing and selling exempt-COLA wines have an opportunity to instead claim the better-known AVA – i.e., Lodi or Suisun Valley – that encompasses the counties within which they operate.

We believe any new regulation that significantly restricts grape source information for exempt-COLA wines should provide an opportunity for the growers within different AVAs to determine collectively whether the use of their AVA, as an indication of grape source, is acceptable for exempt-COLA wines. In California, several grower commissions exist to promote specific appellations and AVAs and California has a well-established system for ascertaining grower sentiment through vote by mail-in ballots.

- c. If TTB intends to establish a new system for claiming grape origin on wine labels, then the bureau should also consider allowing a potentially wide array of geographic references. We see no reason why geographic source information should be restricted to areas delimited by political and administrative boundaries.

The Geographic Names Information System (GNIS) is the Federal and national standard for geographic nomenclature and we believe it is equally valid to allow growers to claim valleys, rivers, ridges, mountain ranges, etc. The U.S. Geological Survey developed the GNIS in support of the U.S. Board on Geographic Names as the official repository of domestic geographic names data, the official vehicle for geographic names use by all departments of the Federal Government, and the source for applying geographic names to Federal electronic and printed products. The GNIS contains information about physical and cultural geographic features of all types in the United States, current and historical.

- d. CAWG believes the proposed tolerance of +/- 2-percent for disclosing grape source county or state is a very strict standard. We don't necessarily oppose the standard, but we wonder why the tolerance is so much more restrictive than that which applies to AVAs or appellations, which have limits of 15-percent and 25-percent, respectively. If TTB favors the proposal in Notice No. 160B, then we believe it is important the bureau propose a clear rationale for any specific percentage tolerance established for grape origin.

- 3) Proposed: Grape source information should not contain any reference to AVA name or a name of viticultural significance or a confusingly similar name, other than a county or state.

CAWG Comments:

- a. As we stated in previous comments on Notice No. 160, CAWG supports strong federal regulation to ensure consistent and accurate usage of wine label terms related to standards of identity -- type, composition and origin. Such claims for wines produced, marketed and sold to consumers should be truthful, non-misleading and verifiable. California is home to many well-known, high value AVAs and it is reasonable to expect California AVA claims on wine labels should meet prevailing regulatory standards established by TTB and California. Industry operators and consumers have a direct interest in the accuracy of origin claims.
- b. We have observed that California growers and wineries located in AVAs characterized by limited winegrape supply and high demand and prices for grapes are more inclined to support stricter regulation of exempt-COLAs, while growers in AVAs with more abundant grape supply and generally lower market prices want no change in how exempt-COLAs are regulated. Growers located in AVAs characterized by lower market prices believe the proposal contained in Notice No. 160B would impair the marketability of their grapes and CAWG is concerned the proposal fails to adequately consider the needs and interests of these growers.

Those California growers who are most opposed to the proposal support the ability of wineries producing and marketing exempt-COLA wines to use a California AVA to inform consumers of the origin of grapes used to make the wine. These growers are eager to promote greater recognition of their AVA through exempt-COLA wines. On the other hand, growers in AVAs characterized by scarcity of grape supply and high-prices support strict regulation of AVA claims as part of an ongoing effort to protect the brand integrity of their AVA from potential abuse. We believe both positions have merit and any attempt to more strictly regulate the category of exempt-COLA wines should explicitly consider the interests of both communities of growers.

- 4) Proposed: Wines labeled with grape source information must be labeled with the "United States" country appellation of origin.

CAWG Comments:

- a. CAWG has long sought more accurate labeling of wines bearing the United States country of appellation. Currently, wines bearing the United States appellation of origin may contain as little as 75-percent wine of United States origin. We believe U.S. consumers are grossly disserved by policy that allow wines to claim United States origin, but in fact contain a significant amount of foreign wine.
- b. If TTB determines it wants to change origin disclosure standards for wines bearing the United States appellation, then the bureau should consider requiring disclosure of grape source information for all wine bearing the United States appellation. We think such a requirement would be consistent with the premise of the proposal contained in Notice No. 160B: "...all wines identified with an AVA name or appellation of origin are subject to the same Federal standards."

The proposal in Notice 160B would establish a duality of origin information for wines bearing the United States appellation; some wines may disclose county and state source information and associated percentage content, while other wines of the same appellation would not have to disclose specific origin information and could contain up-to 25-percent foreign wine. We believe such a proposal threatens to confuse consumers and fails the test of ensuring wines with an "...appellation of origin are subject to the same Federal standards."

CAWG recognizes and values the many benefits derived from current policy governing appellations of origin and AVAs. We believe, as many others do, appellations of origin provide consumers with important information as to the source and quality of grapes used in wine and, in turn, provide growers important opportunities to advance their collective economic interests through improvements in grape quality and market promotion activities. Consequently, we take seriously the concerns expressed by industry members that the current allowance for exempt-COLAs threaten existing appellations of origin.

However, CAWG is keenly interested in protecting California winegrape growers from new regulation that would disrupt the substantial trade in fresh winegrapes to wineries outside the state of California. We believe a substantial number of out-of-state wineries utilize exempt-COLAs for the purpose of making informative, truthful label statements as to the origin of grapes used to make wine; statements that would not otherwise be permitted under a COLA. We believe the proposals contained in Notices No. 160 and 160B threaten to diminish the value of California winegrapes by preventing out-of-state wineries from making truthful, accurate statements regarding the specific geographic source of California grapes.

Again, we strongly encourage TTB to withdraw Notice No. 160 and restart the regulatory process using negotiated rulemaking or a comparable consensus-based approach that utilizes in-person meetings and face-to-face discussion. We believe more effective engagement with industry, one that promotes dialog between diverse stakeholders, could produce consensus agreement on how best to ensure consumers are provided truthful and accurate information on wine labels, in a manner that preserves and protects the wide diversity of growers' interests.

Sincerely,

A handwritten signature in black ink that reads "John Aguirre". The signature is written in a cursive, flowing style with large, connected letters.

John Aguirre  
President