



CALIFORNIA
ASSOCIATION
of WINEGRAPE
GROWERS

CAWG FEDERAL UPDATE

JANUARY 10, 2018

PRODUCE SAFETY RULE BACKGROUND

CAWG has been working to obtain a categorical exemption for winegrapes from FDA's Produce Safety Rule. We want the same regulatory treatment granted to commodities like asparagus, beets, figs, potatoes, and pumpkin, all of which FDA determined are rarely consumed raw. We submitted a lengthy paper detailing for FDA the fact that winegrape varieties in California are almost invariably grown, harvested and sold for processing into wine and should be exempt from the Produce Safety Rule.

FDA did not grant us a categorical exemption and determined, instead, that winegrape growers must use the processing exemption to obtain relief from the Produce Safety Rule.

The processing exemption requires an exchange of disclosure and assurance notifications between growers and wineries. With each load of winegrapes shipped, growers must provide notice, aka disclosure, to the winery that the grapes haven't been processed. In turn, wineries need to provide assurance to the grower that the grapes will be processed to eliminate microbial hazards of public health significance. These records must be kept for a period of two years.

RECENT DEVELOPMENT

Last week, the Food and Drug Administration (FDA) published guidance in the Federal Register announcing it intends to use discretion and will forego enforcement of a variety of produce safety related issues, including requirements related to the processing exemption, until the agency can initiate a new rulemaking.

Upon further analysis and discussion with FDA officials, we learned that FDA intends to forego enforcement as relates to compliance for wineries, but no such relief will be provided for growers. Thus, beginning with the 2018 grape harvest:

- Growers must provide a disclosure statement with each load of winegrapes shipped to a receiver (winery or an intermediary who takes title to the grapes). The disclosure statement must include:
 - The name and location of the vineyard from which the grapes were harvested,
 - An adequate description of the covered produce, such as the specific variety of the grapes, and
 - The location of the growing area within the vineyard (i.e. the specific block where the grapes were grown).
- Growers must maintain records for up to two years establishing that such disclosure statement was properly provided.
- The requirement on the processors part to provide written assurance will not be enforced pending further rulemaking on this issue.

Bottom line, FDA chose to keep in place a regulatory burden, which serves no purpose, for winegrape growers. Growers will need to inform the winery that the grapes haven't been processed – which is obvious to both parties – and maintain records that notice was provided for a period of two years, even though there is no corresponding requirement by the winery to respond to or acknowledge receipt of the notice.

NEXT STEPS

CAWG's lobbyist, Cornerstone Government Affairs (CGA,) is working with the California congressional delegation to organize a meeting between key members – with Reps. Valadao and Panetta in the lead – and FDA officials. We succeeded in including language in the USDA/FDA appropriations bills, in the House and Senate, directing FDA to fix our problem, but Congress keeps passing temporary spending bills and has yet to pass a long-term appropriations bill with our language to fund the remainder of the fiscal year. CGA is also working with House appropriations staff to contact FDA on this issue too.

When we receive more information from CGA on next steps, we will need to activate some grassroots pressure on congressional offices and FDA to elevate awareness of the issue.

TTB NOTICE NO. 160 & NO. 160B

CAWG submitted comments on Notice No. 160B. Key message is, as stated in prior comments submitted on Notice No. 160, CAWG urges TTB to withdraw its proposed rule and initiate a collaborative discussion with industry to address regulatory issues surrounding certificates of exemption of label approval (exempt-COLA).

Wineries and growers in very high value AVAs want label claims concerning origin, grape content and vintage on exempt-COLA wines to conform to the same federal standards that govern the vast majority of wines sold commercially in the United States. Label claims on exempt-COLA wines are not regulated by TTB and do not appear to be actively regulated by state authorities.

While representing a small portion of all wines produced and sold in the United States, a significant number of out-of-state wineries who produce exempt-COLA wines (which can only be sold within the state the winery operates) buy their winegrapes from California growers. If exempt-COLA wines were held to the same regulatory standards as other federally regulated wines, then the wineries making these wines would be prohibited from claiming a California AVA, potentially eliminating a key incentive for these wineries to buy California grapes. Growers who sell to these wineries fear they will lose business.

CAWG's comments attempt to recognize the interests of both communities of growers and we urge TTB to engage industry in a dialog to develop a consensus solution through negotiated rulemaking.