

The Compliance Corner

By Mary Beth Williams

The Times, They Are a-Changin'

Now that I've got that song looping through your brain for the rest of the day, let's talk about some of the regulatory changes we expect we'll see in 2011.

Labeling: The comment period has been extended on the proposed rulemaking for the use of various winemaking terms on labels ("Notice 109"). You now have until March 4, 2011 to make any comments on these proposed changes, which would quantify and define terms such as "estate" vs. "estates", "proprietor grown", "reserve", "bottle aged" and "barrel select". If these terms are defined through regulation, wineries proposing to use those terms on bottles or in advertising will have to meet the criteria established to define each term.

The other big labeling issue coming back to the limelight is the nutritional labeling of wine, just like the labeling you find on any food product in the store. The requirement of such labeling is in political favor right now, and while it won't be the end of the world if enacted, it could be onerous, particularly on smaller wineries, because of the additional testing that would be required to establish the nutritional values, as well as the natural fluctuation in these values as wine ages.

Direct to Consumer Shipping: There are several states that are expected to enact direct to consumer shipping laws in one shape or form in 2011. Maryland, New Jersey, and New Mexico are all expected to allow wineries, both in-and-out-of-state, to ship their products direct to consumers upon approval of a permit. There are even some rumblings that PA may allow wine to truly be shipped direct to consumers instead of the Direct Ship/Special Order hybrid it has now. Note too that there is considerable pressure from consumers, retailers, and the wholesalers to allow retailers to also ship their products direct to consumer. This is already allowed in 13 states, including Virginia, and is gaining traction in many others. It could offer significant competition for wineries in the direct to consumer market.

Taxes: This one is on all the states' radars, some for the better and some for the worse. MA actually just did away with the sales tax on alcohol, and the temporary sales tax on alcohol in NC expires on June 30th. Lawmakers there are scrambling to find a way to make up that income without imposing another tax. That often means that permit fees, application fees, or product registration fees will be increased as an offset, so we'll have to see what NC decides. MD will likely be raising their excise tax, and PA is changing to a bailment system with penalties

associated with over- and under-stocking in the warehouse. PA sought to raise a logistics fee on its suppliers, which translated to about \$1/bottle sold in its stores, but there is a question as to their authority to make that change, so a moratorium has been placed on that increase until June 30.

Lots of things in the hopper, but most of them, other than 5034, hold potential for expanded markets and more sales for the wineries. All the best for a happy and prosperous 2011!

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