

*A CBER Report*

***Background Research  
on  
Wine Regulation***

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## Executive Summary

UNCG's Center for Business and Economic Research (CBER) conducted background research designed to help identify state wine regulations to be benchmarked and compared in future research. CBER conducted a survey of selected state wine officials to determine which categories of wine regulations are most important to their states' industries and are hence most in need of being benchmarked.

CBER contacted 17 wine officials by telephone, and 16 provided numerical ratings. The categories of regulation deemed most important by the officials were:

- State funding for research and training;
- Farm winery laws;
- Signage policies;
- State marketing and promotion programs; and
- Regulations on wholesale distribution.

The categories rated least important were state investment in wine-industry-related infrastructure, primary-source laws, and policies regarding the pouring of in-state wines at state-government events.

When officials were asked to suggest additional policies relevant to their states, the most frequent answer (given by five officials) was agricultural land-use and zoning.

## **1. Introduction**

The American wine industry is growing rapidly. In 2007, there were over 4,700 wineries in the country, more than double the number in 1995. As the industry grows, its regulatory needs are evolving as well. What works for an industry of small wine makers won't necessarily work for an industry of large wineries.

To this end, the North Carolina Wine and Grape Council intends to commission a study that will benchmark and compare state-level wine regulations in the U.S., and in the process update previous research in this area by the trade association Wine America. However, in order to frame that research, NCWGC felt that a preliminary study was needed to determine the appropriate categories of policies and regulations to be included in the benchmarking study. UNCG's Center for Business and Economic Research (CBER) was commissioned to conduct the necessary background research, which was funded by a grant from the North Carolina Rural Economic Development Center.

CBER surveyed selected state wine officials in early 2010 and asked them to report the importance of various types of wine policies and regulations to their states' wine industries. Their responses, and the potential implications thereof, are summarized in this report.

## **2. Methodology**

CBER conducted the survey as a series of telephone interviews. The wine officials to serve as survey respondents were proposed by NCWGC and drawn from the membership of the State Associations Council of Wine America. CBER contacted a total

of 17 officials, and 16 of them gave numerical ratings (the 17th provided comments only).<sup>1</sup>

The survey instrument listed a series of wine-related policies, programs, regulations, and laws, with each category of policies associated with a survey question (see Table 1).

**Table 1: Categories of Policies and Regulations in Survey**

Question	Category
1	State government investment in wine-industry-related infrastructure
2	State funding for research and training
3	Signage policies
4	State marketing and promotion of wine industry
5	State development of wine tourism (not incl. marketing & promotion)
6	Farm winery laws
7	Regulation of retail outlet sales
8	Interstate shipping laws
9	Regulation of wholesale shipping
10	Primary-source laws
11	Franchise laws
12	Tied-house laws
13	Policies regarding wines poured at state-government events.
14	Regulation of winery waste and disposal

Participating wine officials were asked to give a numerical rating to each category, based on the importance of that category to their respective state wine industries. A score of 10 indicated the highest level of importance to the state, while a 0 indicated a complete lack of importance. In addition, participants were invited to make comments about the policies and regulations, and a 15th question asked them to name important policies and regulations not mentioned in the above list. The survey took from 10 to 20 minutes, depending on the length of comments provided by participants.

<sup>1</sup> The states represented by the sample were California, Colorado, Georgia, Maryland, Michigan, Missouri, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, and Washington.

For each category, participants were given a definition of the category or provided with examples. A list of these explanations appears in the Appendix.

### **3. Numerical Results**

The ratings of the categories ranged from 0 to 10. The average rating across all categories and participants was 7.0, which naturally serves as a basis for interpreting the results. This overall average reflects the tendency of the wine officials to believe that most of the categories proposed were at least somewhat important. The following table summarizes the survey results, with the categories ranked by average score.

**Table 2: Numerical Ratings**

<b>Question</b>	<b>Category</b>	<b>Avg Score</b>	<b># 10's</b>	<b># 0's</b>	<b>NC Score</b>
2	Research/training	<b>9.3</b>	9	0	10
6	Farm winery laws	<b>8.8</b>	6	0	7
3	Signage policies	<b>8.5</b>	5	0	9
4	Marketing/promotion	<b>8.3</b>	5	0	9
9	Wholesale distribution	<b>8.2</b>	6	0	9
8	Interstate shipping	<b>7.8</b>	2	0	8
5	Wine tourism	<b>7.5</b>	2	0	6
7	Retail outlet sales	<b>7.3</b>	5	0	7
14	Winery waste	<b>6.7</b>	1	1	7
12	Tied-house laws	<b>6.0</b>	3	2	3
11	Franchise laws	<b>5.8</b>	3	4	6
13	Wine at state events	<b>4.7</b>	0	2	7
10	Primary-source laws	<b>4.4</b>	1	5	2
1	Infrastructure	<b>4.3</b>	3	0	1

The first eight categories (above the double line in the table) all achieved average scores above the overall average for the survey. The other six categories had average scores below that threshold. Only one category had an average of more than 2 points

above the overall average of 7.0, while three categories generated average ratings more than 2 points below the overall average.

Table 2 also reports the number of extreme responses for each category. For example, nine of the numerical 16 responses to Question 2 on research and training were at the high end of 10. The categories receiving ratings of 10 are of course bunched toward the top, with the opposite clustering observed for those receiving zero ratings. Interestingly, the relatively low-rated categories appear to have those scores more because of disagreement among survey participants than because of agreement that they're unimportant. Most of those categories attracted scores of both 10 and zero by different wine officials.

A final gauge of the numerical results is provided in the rightmost column of Table 2, which shows the importance of these policies to the North Carolina wine industry. The average North Carolina rating was 6.5, with five categories falling beneath that average. With the exception of franchise laws, which appear to be more important to North Carolina than the average of the other states, these ratings are roughly in line with the rest of the sample.

#### **4. Qualitative Results**

Survey participants were invited to make comments about the categories they rated. Roughly half did so. Some of their remarks are reproduced in this section, in the order in which they appear in Table 2.

##### **Question 2: Research and training.**

- “Everything in this category is important, but perhaps especially enology.”

- “Production activities need the most help.”
- “Research and training need to be specific to wine-making; we need assistance there in part so that more grapes are grown in-state. We also need assistance on how to run a tasting room.”
- “Research and cooperative extension together make up the most important way the state can help the industry.”

**Question 6:** Farm winery laws.

- “There’s a huge need for these laws, and the industry won’t be the driver; the state needs to be the leader in this.”
- “Our problem is the patchwork of different county ordinances on what constitutes a winery. But while on one hand we’d like a uniform state law, some state-level laws are unnecessarily restrictive, and sometimes county-based ordinances might be better.”
- “These laws will become increasingly important, to define precisely what a winery is.”
- “This is our life’s blood. We’re going through a big land-use discussion right now: what a winery is, what a permitted winery is allowed to do.”
- The law is pretty good, but some would like to see it tightened to require more in-state fruit.”

**Question 3:** Signage policies.

- “Our first sale comes from word of mouth, but our second sale comes from signage.”
- “Fees are always a big issue with this.”

- “It costs us a fortune, and the state is not helping us.”
- “Currently the wineries here pay for signs themselves; it’s really a private initiative rather than a state-funded one.”

**Question 4:** State marketing and promotion.

- “The state does a fabulous job, but more needs to be done.”
- “Wine is a regional product and benefits from having a regional identity.”
- “Historically, the (political) party that’s going out of power spends a lot of money on this on its way out.”
- “It’s counterintuitive that small wineries wouldn’t want someone else to pay for advertising, but generic advertising doesn’t sound great to all producers.”
- “It’s important but not a deal-breaker because of advertising done by individual wineries.”
- “This is very important to the industry.”

**Question 9:** Wholesale distribution.

- “Not a real problem here—we can self-distribute and the capacity caps aren’t binding.”
- “In a growing industry, economies of scale tend to lead larger wineries to want to use distributors.”
- “A big question in our minds as we face the possibility of wine sales in grocery stores is whether that will affect our current ability to self-distribute without limit.”
- “We’d like to see more wholesalers in metro areas.”

- “The ability of wineries to distribute directly to wine stores and restaurants is vital.”

**Question 8:** Interstate shipping laws

- “We need to get governments out of the business of restricting the sale of alcohol.”
- “Other states have entry barriers and charge an annual fixed fee, and that’s a real barrier. We don’t do a lot of shipping because of those barriers.”
- “We actually face more restrictions in shipping to our own residents.”
- “There are too many different laws for most small wineries to deal with.”
- “This is really a federal rather than a state issue. HR 5034, the CARE Act, was introduced by wholesalers and involves lots of restriction of interstate shipping of wines. It will essentially ban out-of-state shipping.”
- “There’s always a tension between state and federal laws: the Commerce Clause vs. the states’ right to regulate alcohol.”

**Question 5:** State development of wine tourism.

- “This is a very important factor for the industry, but it’s best left to local and regional organizations.”
- “Very few wineries here are large, and developing traffic via festivals is extremely important for smaller operations.”

**Question 7:** Regulation of retail outlet stores.

- “We’d like to pursue the outlet of selling wine at farmer’s markets, which is not currently open to us.”

- “This is only marginally relevant, because if you sell to restaurants and liquor stores, you have to sell at a much reduced price.”
- “We have no capacity caps and can sell all we want to wholesalers or individuals.”

**Question 14:** Regulation of winery waste and disposal.

- “Most wineries here are rural and face lax regulations, but I can see this being relevant in the future.”
- “The evolution of environmental concern about winery and grape operations has ramped up considerably. There are increasing demands for regs, which leads to higher business and compliance costs.”
- “Waste and byproducts can often be discarded and used in the agricultural operation. For water issues we try to work with the government to find solutions.”
- “Lots of winery waste gets treated as hazardous material depending on the county, which is ridiculous.”

**Question 12:** Tied-house laws.

- “We have laws against horizontal integration instead: we can’t own more than one business on a given tier.”
- “It’s a moot point here. We have these laws but they haven’t inhibited us.”

**Question 11:** Franchise laws.

- “It’s easier to divorce to wife of 40 years than to get rid of a distributor you’ve had for 4 months.”

- “If your distributor doesn’t do a good job, you’re stuck. You have to show negligence to get out. As a result, most wineries don’t get good representation from their wholesalers.”
- “When a winery makes a deal with the devil—the wholesaler—it takes a lot to get out of that agreement.”
- “Only about 15% of our wineries use a wholesaler, but that accounts for a majority of total production.”
- “The ability of a winery to move from one distributor to another is critical. These agreements need to be winery-friendly, not wholesaler-friendly.”

**Question 13:** Policies regarding wines at state-government events.

- “It sounds like a good law, but we’re pretty laissez-faire here.”
- “What they ask us to do is pour wine for free! And we do it, but we don’t have the opportunity to sell, and that’s a big hassle.”
- “I wish we could convince everyone to do this.”
- “Our governor doesn’t even have alcohol at the governor’s mansion.”

**Question 10:** Primary-source laws.

- “It’s never popped up in any conversations around the state.”
- “It would be an issue if it were proposed.”

**Question 1:** State government investment in wine-industry-related infrastructure.

- “There’s been no real investment at this point, but no problems yet.”
- “Our industry is small enough that any infrastructure will be a function of what other industries need.”
- “Roads are mostly important for bringing tourists to the wineries.”

## **5. Other Comments**

Survey participants were invited to make additional comments, in particular about policies or regulations that were not mentioned in the survey but which they feel are important to their states' wine industries. The category of regulations most frequently mentioned was land-use and zoning. Some mentioned conflicts between winery agriculture and manufacturing, some mentioned non-winery agriculture. A few mentioned the patchwork quilt of county- and township-level land-use ordinances. Other comments include:

- “We need to get rid of control states—it’s definitely an inhibitory factor in running a winery.”
- “We would like for our industry to grow, but we cannot get funding at the state level to fund our industry organizations. It’s hard to get money from the wineries to get things done.”
- “I would hope that we can have reasonable rather than unreasonable regulation. We need to recognize that wine is alcohol and needs to be regulated appropriately. But not absurdly.”
- “Taxation is huge. You’re not going to get away from general sales-tax issues, but wine-specific taxes such as excise taxes on production are terribly relevant. We’ve faced excise tax increases, but also per-drink fees designed to ‘mitigate the harms caused by alcohol.’ We need low, stable taxes, which we believe fosters growth in the industry.”

## **6. Implications**

The conclusions to be drawn from survey data like the results described in this report are often in the eyes of the beholder. The results can be interpreted differently by different people. However, a few implications are clear as we envision a future benchmarking study.

1. Research and training, farm-winery laws, signage, marketing and promotion, and wholesale distribution are quite important to state wine industries and should be benchmarked in order to generate a useful data set of state wine regulations.
2. Most of the categories receiving below-average ratings are probably best left out of the benchmarking study.
3. These survey results can be used to determine which of the mid-rated categories should be included, i.e. precisely where to draw the line between inclusion and exclusion. For example, perhaps the ratings midpoint of 5.0 is better than the survey average of 7.0 to inform this decision.
4. Some categories with special resonance for North Carolina (for example, the issue of state wines poured at state events) might be studied regardless of the relatively low score here.
5. The comments by survey participants suggest that land-use policies might be included in the benchmarking study, though such policies are construed by some as part of the category of farm-winery laws.
6. The benchmarking study should be quite detailed in order to address the complexity of some of these categories in different states.

## **9. Appendix**

This Appendix includes a list of definitions and examples provided to survey participants.

**Question 1:** State government investment in wine-industry-related infrastructure includes roads, railroads, ports, and warehouse facilities that serve the wine industry, though not necessarily exclusively.

**Question 2:** State funding for research and training relevant includes programs relevant to the wine industry, such as training programs at community colleges, research programs at four-year universities, and agricultural cooperative extension programs.

**Question 3:** Signage policies govern the state's placement of (and fees charged for) signs on interstate and other highways indicating nearby wineries.

**Question 4:** State marketing and promotion of the wine industry involves advertising efforts in print and broadcast media, the Internet, and billboards.

**Question 5:** State development of wine tourism excludes marketing and promotion but includes the establishment of visitor centers, wine festivals, etc.

**Question 6:** Farm winery laws govern the ability of farm-based wineries to market their wines, including regulations on off- vs. on-site sales and off- vs. on-site tasting rooms.

**Question 7:** Regulation of retail outlet stores governs wineries' links to stores owned by others; including outright bans and capacity caps.

**Question 8:** Interstate shipping laws regulate the ability of wineries to sell directly to consumers and retail stores in other states.

**Question 9:** Wholesale distribution laws regulate the ability of wineries to self-distribute within their states, often allowing it below some threshold.

**Question 10:** Primary-source laws prevent consumers from buying wines from anyone but the producer or its authorized agent, thereby attenuating the so-called three-tier system of producer-wholesaler-retailer.

**Question 11:** Franchise laws give distributors an exclusive right to sell branded wines in a defined territory.

**Question 12:** Tied-house laws prevent vertical integration up and down the three-tier system.

**Question 13:** Policies regarding wines poured at state-government events might require that only state wines be served.

**Question 14:** Regulation of winery waste and disposal (no elaboration needed).