

TTB ISSUES NEW PRIORITIES FOR FY 2020



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The Federal Government's *Unified Agenda of Regulatory and Deregulatory Actions* reports on the actions that administrative agencies of the Executive Branch plan to issue in the near and long term. The Unified Agenda is released by the Office of Information and Regulatory Affairs, part of the federal government's Office of management and Budget.

In the federal government's Fiscal Year 2020 (which began on October 1, 2019), the U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB) will continue rulemaking priorities that include finalizing deregulatory rules intended to: (i) reduce the number of reports submitted by certain regulated industry members; and (ii) expand industry flexibility with regard to wine and distilled spirits beverage container sizes (standards of fill). TTB also plans to publish for public comment proposed deregulatory changes in connection with permit applications.

Priority projects also include continuing rulemaking efforts that respond to industry member petitions to authorize new wine treating materials and processes, new grape varietal names for use on labels of wine, and new American Viticultural Areas (AVAs). None of the TTB rulemaking documents to be issued in FY 2020 are expected to be "regulatory actions" under Executive Order 13771 and subsequent OMB guidance.¹

In FY 2020, TTB plans to give priority to the following deregulatory and regulatory measures:

- **Proposal to Streamline and Modernize Permit Application Process** (RINs: 1513-AC46, 1513-AC47, 1513-AC48, and 1513-AC49, Modernization of Permit and Registration Application Requirements for Distilled Spirits Plants, Permit Applications for Wineries, Qualification Requirements for Brewers, and Permit Application Requirements for Manufacturers of Tobacco

¹ Executive Order 13771, entitled "Reducing Regulation and Controlling Regulatory Costs," is an executive order that became effective on January 30, 2017. It directs agencies to repeal two existing regulations for every new regulation, and to do so in such a way that the total cost of regulations does not increase. It is an example of a "Pay As You Go" policy for regulations. See The White House, Office of the Press Secretary *Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs* (January 30, 2017).

Products or Processed Tobacco, respectively). (Deregulatory) Consistent with EO 13771 and 13777,² in FY 2017, TTB engaged in a review of its regulations to identify any regulatory requirements that could potentially be eliminated, modified, or streamlined in order to reduce burdens on industry. In FY 2018 and FY 2019, TTB removed a number of requirements where possible without the need for rulemaking; this included the elimination of certain information collected on TTB permit-related forms. In FY 2020, TTB intends to propose amending its regulations to eliminate or streamline qualification and application requirements for new and existing businesses, including distilled spirits plants, wineries, breweries, and manufacturers of tobacco products or processed tobacco. In addition, through these regulatory amendments, TTB intends to address a number of comments it received from the interested public, including industry members, through the Treasury Department’s Request for Information on deregulatory ideas (Docket No. TREAS-DO-2017-0012, published in the Federal Register on June 14, 2017).

• **Revisions to the Regulations to Provide Greater Flexibility in the Use of Wine and Distilled Spirits Containers** (RIN: 1513-AB56, Standards of Fill for Wine, and RIN: 1513-AC45, Standards of Fill for Distilled Spirits). (Deregulatory) In FY 2019, TTB issued two notices in which TTB addressed petitions to amend the regulations governing wine and distilled spirits containers to provide for additional authorized “standards of fill.”³ In these proposals, TTB offered the opportunity to comment on several options, all of which would provide industry members greater flexibility in producing and sourcing containers and meeting consumer demand. TTB intends to finalize these deregulatory actions in FY 2020.

• **Revisions to the Regulations to Reduce Report Filing Frequency** (RIN: 1513-AC30, Changes to Certain Alcohol-Related Regulations Governing Bond Requirements and Tax Return Filing Periods). (Deregulatory) On December 18, 2015, President Barak Obama signed into law the Protecting Americans from Tax Hikes Act (PATH Act). The PATH Act contains changes to certain statutory provisions that TTB administers in the Internal Revenue Code regarding excise tax return due dates and bond requirements for certain smaller excise taxpayers. These amendments took effect beginning in January 2017, and TTB published a temporary rule amending its regulations to implement these provisions. At the same time, TTB published in the Federal Register (82 FR 780) a notice of proposed rulemaking requesting comments on the amendments made in the temporary rule and proposing further amendments to the regulations governing reporting requirements for distilled spirits plants (DSPs) and breweries to reduce the regulatory burden on industry members who pay taxes and file tax returns annually or quarterly. Under the proposal, those industry members would also submit reports less frequently; that is, either annually or quarterly, aligned

² Executive Order 13777, entitled “Enforcing the Regulatory Reform Agenda,” is a presidential executive order in February 2017 that established new regulatory reform officers and regulatory reform task forces to oversee the implementation of E.O. 13771. EO 13777 establishes the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people; requires each agency head to designate a Regulatory Reform Officer responsible for overseeing the implementation of regulatory reform initiatives and policies; requires each agency to establish a Regulatory Reform Task Force to evaluate existing regulations and make recommendations to the agency head regarding regulations to repeal, replace or modify; and requires each agency listed in 31 U.S.C. § 901(b)(1) to incorporate into its Annual Performance Plan performance indicators to measure progress toward 1) achieving regulatory reform initiatives and policies and 2) identifying regulations to repeal, replace or modify.

³ The term “standard of fill” generally relates to the size of containers, although the specific regulatory meaning is the authorized amount of liquid in the container, rather than the size or capacity of the container itself..

with their filing of the tax return, rather than monthly as generally provided under current regulations. To be eligible for annual or quarterly filing, the DSP or brewery must reasonably expect to be liable for not more than \$1,000 in excise taxes (in the case of annual filing) or \$50,000 in excise taxes (in the case of quarterly filing) for the calendar year and must have been liable for not more than these respective amounts in the preceding calendar year. The reduced reporting frequency will reduce regulatory burdens on these smaller industry members.

- **Revisions to the Regulations to Reflect Statutory Changes to the Definition of Hard Cider Under the Internal Revenue Code** (RIN: 1513–AC31). (Not yet determined) The PATH Act also contained changes to the Internal Revenue Code amending the definition of hard cider for excise tax classification purposes. The amended definition broadened the range of products to which the hard cider tax rate applies. In FY 2017, TTB published a temporary rule amending its regulations to implement these provisions. At the same time, TTB published in the Federal Register (82 FR 7753) a notice of proposed rulemaking requesting comments on the amendments made in the temporary rule, including labeling requirements under the IRC. In 2018, TTB reopened the comment period for the notice, as requested by industry members and, after consideration of the comments, intends to issue a final rule in FY 2020.

- **Modernizing the Alcohol Beverage Labeling and Advertising Requirements** (RIN: 1513-AB54, and RIN: 1513-AC54. (Deregulatory) The Federal Alcohol Administration Act requires that alcohol beverages introduced in interstate commerce have a label approved under regulations prescribed by the Secretary of the Treasury. In accordance with the mandate of Executive Order 13563 of January 18, 2011, regarding improving regulation and regulatory review,⁴ TTB conducted an analysis of its alcohol beverage labeling regulations to identify any that might be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with that analysis. These regulations were also reviewed to assess their applicability to the modern alcohol beverage marketplace. As a result of this review, and further review in FY 2017 and FY 2018 consistent with Executive Orders 13771 and 13777 regarding reducing regulatory burdens, in FY 2019, TTB proposed revisions to modernize the regulations concerning the labeling requirements for wine, distilled spirits, and malt beverages. TTB anticipated that these regulatory changes would assist industry in voluntary compliance, decrease industry burden, and result in the regulated industries being able to bring products to market without undue delay. TTB received over 1,100 comments in response to the notice, which included suggestions for further revisions. TTB intends to finalize aspects of that proposal, and take other aspects into further consideration, consistent with comments received. In FY 2019, TTB intends to bring to completion a number of rulemaking projects published as notices of proposed rulemaking in FY 2017 in response to industry member petitions to amend the TTB regulations and reopened for public comment in FY 2018.

- **Proposal to Amend the Regulations to Authorize the Use of Additional Wine Treating Materials** (RIN: 1513–AB61). (Not yet determined) In FY 2017, TTB proposed to amend its regulations pertaining to the production of wine to authorize additional treatments that may be

⁴ Executive Order 13563, *Improving Regulation and Regulatory Review*, 76 Fed. Reg. 3821 (Jan. 18, 2011). On January 18, 2011, President Barak Obama issued Executive Order 13563, reaffirming the framework for White House review of existing administrative rules and requiring agencies to develop plans to conduct a retrospective review of their existing rules.

applied to wine and to juice from which wine is made. These proposed amendments were made in response to requests from wine industry members to authorize certain wine treating materials and processes not currently authorized by TTB regulations. Although TTB may administratively approve such treatments, rulemaking facilitates the acceptance of exported wine made using those treatments in foreign markets. In FY 2018, TTB reopened the comment period for the notice, as requested by industry members and, after consideration of the comments, intends to issue a final rule in FY 2020.

• **Proposal to Amend the Regulations to Add New Grape Variety Names for American Wines** (RIN: 1513–AC24). In FY 2017, TTB proposed to amend its wine labeling regulations by adding a number of new names to the list of grape variety names approved for use in designating American wines. The proposed deregulatory amendments would allow wine bottlers to use these additional approved grape variety names on wine labels and in wine advertisements. In 2018, TTB reopened the comment period for the notice, as requested by industry members and, after consideration of the comments, intends to issue a final rule in FY 2020.

Below is a list of TTB’s specific administrative rule initiatives and their current status, as well as links to the full text of those rule proposals via the federal government’s Office of Information and Regulatory Affairs Website:

TREAS/TTB	Prerule Stage	Definition of "Oak Container" for Purposes of Labeling Certain Distilled Spirits; Request for Public Comment	1513-AC50
TREAS/TTB	Proposed Rule Stage	Use of American Viticultural Area Names as Appellations of Origin on Wine Labels	1513-AC13
TREAS/TTB	Proposed Rule Stage	Proposal Regarding Labeling Wines Containing Added Distilled Spirits	1513-AC29
TREAS/TTB	Proposed Rule Stage	Establishment of the Candy Mountain Viticultural Area and Modification of the Yakima Valley Viticultural Area	1513-AC42
TREAS/TTB	Proposed Rule Stage	Proposal to Allow for the Use of Molasses and Grain in Wine	1513-AC44
TREAS/TTB	Proposed Rule Stage	Modernization of Permit and Registration Application Requirements for Distilled Spirits Plants	1513-AC46
TREAS/TTB	Proposed Rule Stage	Modernization of Permit Application Requirements for Wine Premises	1513-AC47
TREAS/TTB	Proposed Rule Stage	Modernization of Qualification Requirements for Brewers' Notices	1513-AC48
TREAS/TTB	Proposed Rule Stage	Establishment of the Alisos Canyon Viticultural Area	1513-AC51
TREAS/TTB	Proposed Rule Stage	Establishment of the Royal Slope Viticultural Area	1513-AC53
TREAS/TTB	Proposed Rule Stage	Proposed Establishment of the Verde Valley Viticultural Area	1513-AC54
TREAS/TTB	Proposed Rule Stage	Proposed Modification of the Boundaries of the Santa Lucia Highlands and Arroyo Seco Viticultural Areas	1513-AC55
TREAS/TTB	Proposed Rule Stage	Implementation of Diplomatic Exemption From Federal Excise Tax on Tobacco Products Manufactured in the United States, Designated by U.S. Department of State	1513-AB71
TREAS/TTB	Proposed Rule Stage	Distinguishing Between Roll-Your-Own Tobacco and Pipe Tobacco for Federal Excise Tax Purposes	1513-AB78

TREAS/TTB	Proposed Rule Stage	Modernization of Permit Application Requirements for Manufacturers of Tobacco Products or Processed Tobacco	1513-AC49
TREAS/TTB	Final Rule Stage	Modernization of the Alcohol Beverage Labeling and Advertising Regulations	1513-AB54
TREAS/TTB	Final Rule Stage	Standards of Fill for Wine	1513-AB56
TREAS/TTB	Final Rule Stage	Wine Treating Materials and Related Regulations	1513-AB61
TREAS/TTB	Final Rule Stage	Proposed Addition of New Grape Variety Names for American Wines	1513-AC24
TREAS/TTB	Final Rule Stage	Proposed Revision to Wine Label Information Record Requirements	1513-AC27
TREAS/TTB	Final Rule Stage	Changes to Certain Alcohol-Related Regulations Governing Bond Requirements and Tax Return Filing Periods	1513-AC30
TREAS/TTB	Final Rule Stage	Implementation of Statutory Amendments Requiring the Modification of the Definition of Cider	1513-AC31
TREAS/TTB	Final Rule Stage	Establishment of the West Sonoma Coast Viticultural Area	1513-AC40
TREAS/TTB	Final Rule Stage	Establishment of the Eastern Connecticut Highlands Viticultural Area	1513-AC41
TREAS/TTB	Final Rule Stage	Elimination of Certain Standards of Fill for Distilled Spirits; Amendment of Malt Beverage Net Contents Labeling Regulation	1513-AC45
TREAS/TTB	Final Rule Stage	Establishment of the Tualatin Hills and Laurelwood District Viticultural Area	1513-AC52
TREAS/TTB	Final Rule Stage	Update of Regulatory References to Incorporated Standards	1513-AC35
TREAS/TTB	Final Rule Stage	Technical Corrections to Alcohol and Tobacco Tax and Trade Bureau Regulations	1513-AB93
TREAS/TTB	Final Rule Stage	Civil Monetary Penalty Inflation Adjustment--Alcoholic Beverage Labeling Act	1513-AC28

An ambitious agenda, for sure.

For more information, please contact GrayRobinson's [Nationwide Alcohol Industry Group](#) at (866) 382-5132 or email us at: beveragelaw@gray-robinson.com