

2009 TTB Expo Presentation

Rulemaking

Presented by

William H. Foster

Assistant Administrator, Headquarters Operations



Overview

- What Gives TTB the Right to Make Rules?
- The Regulatory Hoops Game
- What the Heck Is TTB Up to Now?
- What's in the Works at TTB?
- How Do I Comment on TTB's Rules?

What Gives TTBB the Right to
Make Rules?

Our Statutory Authority

- Internal Revenue Code (26 U.S.C.):
 - Chapter 51—distilled spirits, wine, and beer
 - Chapter 52—tobacco products and cigarette papers and tubes
 - Sections 4181 and 4182—firearms and ammunition excise taxes
- Federal Alcohol Administration Act (FAA Act, 27 U.S.C. Chapter 8)
- Alcoholic Beverage Labeling Act (Government warning label)
- Webb-Kenyon Act (27 U.S.C. Section 122)

Alcohol and Tobacco Regulations

- Contained in Chapter I, Title 27, Code of Federal Regulations (27 CFR chapter 1)
- Each CFR title is divided into “parts,” which cover a particular subject, and each part is further divided into “subparts” and within each subpart “sections”

Regulated Industries

- Beer
- Wine
- Distilled Spirits
- Tobacco
- Firearms and Ammunition Excise Tax (FAET)
- Other Alcohol:
 - Alcohol Fuel
 - Manufacturer of Nonbeverage Products (MNBP)
 - Industrial Alcohol
 - Specially Denatured Alcohol (SDA)
 - Tax-free Alcohol

Regulatory Responsibilities

- Assess program needs for new or amended regulations
- Develop regulations to implement new or amended laws
- Resolve technical questions affecting tax classifications
- Publish rulings, industry circulars, and other publications

The Regulatory Hoops Game

Clear, Clean, and By The Book

- Rules must ...
 - Be easy to understand
 - Serve the purpose intended
 - Be made in accordance with the prescribed legal process

A Guide to Regulations – the 9-Step Program

1. Causal event
2. Needs analysis
3. Proposal preparation
4. OMB review
5. Publication of proposal
6. Public comments
7. Preparation of final rule – Treasury Decision
8. OMB review
9. Publication of final rule

Legal Foundation – “How Can They Do That?”

- Laws are the legal foundation for TTB to “collect the revenue” and to “protect the public”
- Congress develops and passes laws that govern TTB’s programs
- Laws passed by Congress authorize regulatory agencies to promulgate regulations to implement the agency’s statutory programs

Regulatory Agencies

- Are empowered to create and enforce regulations that carry the full force of law
- Create regulations according to rules and processes defined by the Administrative Procedure Act (APA)

Administrative Procedure Act

- The APA defines a regulation (or rule) as:
 - An agency statement ... designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency
- The process of “rulemaking” is defined as:
 - Agency action which regulates future conduct of groups of persons or a single person; it is essentially legislative in nature, not only because it operates in the future but because it is primarily concerned with policy considerations

“Preparation” for Proposed and Final Rules – Legal Analyses

- Administrative Procedure Act (5 U.S.C. 1001-1011)
- Regulatory Flexibility Act (5 U.S.C. 601-612)
- Paperwork Reduction Act (44 U.S.C. 3501-3521)
- Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*)
- National Environmental Policy Act (42 U.S.C. 4321-4347)
- National Technology Transfer and Advancement Act (15 U.S.C. 272 note)

Considerations We Must Factor In

When developing a regulation, TTB must consider several factors:

- Legal authority
- Whether need is best addressed through regulation
- Government levels affected
- Political interest
- International impacts
- Unfunded mandate
- Small entities affected
- Economic significance

More “Preparation” – Presidential Orders

- Regulatory Planning and Review (E.O. 12866)
- Governmental Actions and Interference with Constitutionally Protected Property Rights (E.O. 12630)
- Protection of Children from Environmental Health Risks and Safety Risks (E.O. 13045)
- Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)
- Federalism (E.O. 13132)
- Consultation and Coordination with Indian Tribal Governments (E.O. 13175)
- Civil Justice Reform (E.O. 12988)

Federal Register

- Congressional Review Act
 - 5 U.S.C. 801-808
- Administrative Procedure Act
 - 5 U.S.C. 552
- Federal Register Act
 - 44 U.S.C. 1501-1511

What the Heck Is
TTB Up to Now?

Annual Regulatory Plan

- Each Federal agency must publish a Regulatory Plan in coordination with the publication of its Fall Unified Agenda
- Provides a brief explanation of its mission and its annual regulatory goals
- TTB is closely monitored by Treasury
- Treasury has final approval for publication of TTB's Regulatory Plan

Semi-Annual Unified Agenda

- In accordance with Executive Order 12866, TTB is required to publish a regulatory agenda every 6 months
- The Agenda describes all of our regulations that are under development or in review

What's in the Works at TTB?

How Do I Comment on TTB's
Rules?

Resources

- To submit comments to a TTB notice published in the Federal Register or to review submitted comments, use the e-Government interface for Regulations.gov at www.regulations.gov
- Please visit the e-Government room for a demonstration of Regulations.gov

Resources (Continued)

- To download (or print) copies of our regulatory documents, please visit our Web site at www.ttb.gov and use the links in this box

Public Information

[Press Room](#)

[Publications](#)

[Notices of Proposed Rulemaking](#)

[Treasury Decisions](#)

[Public COLA Registry](#)

[Newsletters](#)

RRD Contact Information

- RRD Telephone: (202) 453-2265
- Frank Foote, Director
 - [REDACTED]
- Theresa McCarthy, Deputy Director
 - [REDACTED]
- Gerry Isenberg, Assistant Director
 - [REDACTED]