

2009 TTB Expo Presentation

Applying for TTB Approval as a Tobacco Industry Member

Presented by

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Overview

- Original Qualification
- Changes of Control/Proprietorship
- Common Problems Encountered During the Application Process
- TTB Screening and Investigative Process
- Compliance Concerns
- Presentation Referrals
- CHIPRA

Original Qualification

Federal Laws and Regulations

- **Internal Revenue Code:**
 - 26 U.S.C., Chapter 52
- **Title 27 Code of Federal Regulations (CFR):**
 - 27 CFR part 40 – Manufacturer of Tobacco Products
 - 27 CFR part 44 – Proprietor of Export Warehouse
 - 27 CFR part 41 – Importer of Tobacco Products
 - 27 CFR part 40, subpart K – Manufacturer of Cigarette Papers and Tubes

Where Do I Obtain an Application Packet?

- Application packets are on www.ttb.gov
- Download all information, including the TTB forms
- Review the regulations in 27 CFR that apply to the application you will be filing – available on www.ttb.gov
- Submit a complete application packet to the National Revenue Center (NRC)
- The NRC cannot process incomplete applications. Your application packet may be returned to you due to missing or incomplete information.

When Do I Need an Application?

- Applications are filed:
 - To start a new business as a manufacturer of tobacco products, an importer of tobacco products, or an export warehouse proprietor
 - For a change in ownership of an existing business (change in proprietorship)
 - For a change in control of an existing business (actual or legal control)
 - To renew permit (for tobacco importers only)

Manufacturer of Tobacco Products

- To apply, you must file with the NRC:
 - Application for Permit, TTB F 5200.3
 - Tobacco Bond – Surety, TTB F 5200.26, **OR**
 - Tobacco Bond – Collateral, TTB F 5200.25
 - Personnel Questionnaire, TTB F 5000.9 (if applicable)
 - Environmental Information, TTB F 5000.29
 - Supplemental Information on Water Quality, TTB F 5000.30
 - Special Tax Registration and Return, TTB F 5630.5t
 - Diagram of factory premises

Export Warehouse Proprietors

- You must file with the NRC:
 - Application for Permit, TTB F 5200.3
 - Tobacco Bond – Surety, TTB F 5200.26, **OR**
 - Tobacco Bond – Collateral, TTB F 5200.25
 - Personnel Questionnaire, TTB F 5000.9
(if applicable)
 - Special Tax Registration and Return,
TTB F 5630.5t
 - Diagram of export warehouse premises
(27 CFR 44.88)

Importer of Tobacco Products

- You must file with the NRC:
 - Application for Permit, TTB F 5230.4
 - Personnel Questionnaire, TTB F 5000.9 (if applicable)
 - A copy of a contract or letter of intent from foreign supplier
 - For importation of trademarked tobacco products, a copy of the contract or written authorization from the owner of the trademarked brand allowing the applicant to import and distribute the brand in the U.S.

Importer of Tobacco Products (Continued)

- A list of the States into which the applicant is currently distributing tobacco products and a copy of any associated licensing
- A list of the States that have prohibited the applicant or other individuals or businesses listed on the application from conducting tobacco operations within their State

Importer of Tobacco Products (Continued)

- Tobacco importer permits must be renewed every 3 years
- Importers wishing to continue operations must renew their permit by making application:
 - Within 30 days of expiration date on current approved permit; file TTB F 5230.4, Application For Permit Under 26 U.S.C. Chapter 52 Importer of Tobacco Products; and
 - Surrender current approved permit.

Manufacturer of Cigarette Papers & Tubes

- You must file with the NRC:
 - Tobacco Bond – Surety (TTB F 5200.26), **OR**
Tobacco Bond – Collateral (TTB F 5200.25)
 - Environmental Information, TTB F 5000.29
 - Supplemental Information on Water Quality,
TTB F 5000.30
 - Personnel Questionnaire, TTB F 5000.9 (if applicable)
 - Special Tax Registration and Return, TTB F 5630.5t

Note: Permits are NOT issued to paper and tube manufacturers. When the bond is approved, a number is assigned to the factory of the manufacturer for internal revenue purposes only.

Supplemental Information for Applications*

- **Trade Name Registration** (if required by State or local government)
- **Signing Authority:**
 - If someone will be signing the application and/or supporting documents or will act on your behalf, you must submit one of the following:

***includes paper & tube manufacturers**

Supplemental Information (Continued)

- TTB Form 5000.8, Power of Attorney
- TTB Form 5100.1, Signing Authority for Corporate or LLC Officials
- Corporate resolution or specific notification in organizational documents granting this authority

Supplemental Information (Continued)

- Organizational documents if you are filing as a corporation:
 - Copy of certificate and articles of incorporation
 - Copy of bylaws
 - List of officers (including their titles), directors, and stockholders holding more than 10% of the stock—including the number of shares held

Supplemental Information (Continued)

- Organizational documents if your are filing as a Limited Liability Company (LLC):
 - Copy of certificate and articles of organization on file with the State
 - Copy of operating agreement
 - List of members/managers and their percentage of ownership interest

Supplemental Information (Continued)

- If you are filing as a Partnership, you must file:
 - Copy of the partnership agreement — if a verbal agreement exists, please provide a written statement to that effect signed by all partners
 - If no single partner has signing authority on behalf of the partnership, all partners must sign each form sent to our office
 - List of the partners and their percentage of ownership
 - Copy of the certificate of partnership when required to be filed by any State, county, or municipality

Supplemental Information (Continued)

- Statement advising that the premises is covered by the National Historic Preservation Act (if applicable)
- If operating in a State other than the State in which incorporated or organized, you must provide the certificate which allows you to operate in that State as a foreign corporation
- Legible photocopy of the driver's license or official State ID card of the primary contact person who will be interviewed by TTB regarding the application

Supplemental Information (Continued)

- Source of funds documentation
- If premises leased, a copy of the lease agreement
- If premises owned, verification of ownership (e.g., a copy of a deed)
- Application for Employer Identification Number (EIN); use IRS Form SS-4 – EIN may be obtained on-line at www.irs.gov

Changes of Control/Proprietorship

Change of Proprietorship

- When an existing proprietor has new ownership (e.g., change from sole proprietor to a corporation):
 - The new owner must qualify for a permit before beginning operations; so it is important that all the forms are filed well in advance of the proposed effective date of the change
 - The predecessor must submit documents as required for discontinuance

Change of Control

- When a change of stock distribution or LLC membership ownership occurs producing a new person or company owning more than 50% of the outstanding stock or ownership interest
- A new application form must be submitted within 30 days of the change; in these cases, the organizational structure of the entity has not changed
- If a new stockholder holds more than 10% of stock or interest, and is not already on record, TTB F 5000.9, Personnel Questionnaire, must be filed

Common Problems

Problems with Tobacco Importer Renewals

- Changes have occurred without TTB notification (especially changes in control and/or ownership)
- Monthly reports for all periods are not filed
- Industry member never transacted any business

Common Application Problems

- Principal name must appear exactly as it is registered with the State
- Signing authority for individuals signing the forms
- Brand names listed as trade names (manufacturer of tobacco products)

Common Application Problems (Continued)

- Description of premises must be on attached page:
 - Diagram required per 27 CFR 40.69 (Tobacco Manufacturer) and 27 CFR 44.88 (Export Warehouse Proprietor)
- Incomplete investment information
- Lease information missing

Common Bond Problems

- Principal name must appear exactly as it is registered with the State
- Item 9 — confusion regarding box checked for “Individual” vs. “Blanket bond”
- Surety power of attorney must be attached and properly signed and dated

TTB Screening and Investigative Process

Screening & Investigative Process

- An application is submitted to the NRC and entered into NRC databases
- A Specialist will review the application and background check results
- The Specialist will contact you to correct any errors and obtain any missing information

Screening & Investigative Process

(Continued)

- A Specialist will conduct an in-depth phone interview
- An application may be referred to the Trade Investigations Division for onsite inspection
- Recommendation and decision on final action (approval, denial, abandonment) will be made and taken by the NRC

Compliance Concerns

Compliance Concerns

- Unreported changes of ownership, control, company principals
- Inadequate bond coverage
- Unauthorized signatures on documents

In Closing

Presentation Referrals

- Other TTB Expo presentations related to this industry that you may wish to attend:
 - Reporting Changes to TTB for Tobacco Permittees
 - Tobacco Products Classification
 - CHIPRA Information
 - Required Reports – Tobacco Taxes
 - Marks, Labels, Notices – Tobacco Packaging
 - Exporting Tobacco Products
 - Others (State Reps, Customs)

Summary

- A permit is required to manufacture, import, and export tobacco products.
- A change in ownership and/or stock distribution of the permit holder may require a new application.
- The application packets (and related forms) are available on www.ttb.gov.
- Common problems with the application and/or bond forms can be avoided.
- An application may be referred to Trade Investigations for onsite investigation.

Contact Information

- **Mail:**

- 550 Main Street, Ste. 8002
Cincinnati, OH 45202-5215

- **Phone — National Revenue Center:**

- 1-877-882-3277

- **E-mail:**

- Linda Meier (Permit Specialist): [REDACTED]
- Pam Becker (Industry Specialist): [REDACTED]
- Lisa Kauffman (Permit Specialist): [REDACTED]