

February 2010



FDA NOTICE-USE OF CERTAIN TERMS ON TOBACCO PRODUCTS

The Food and Drug Administration (FDA) is establishing a public docket to provide an opportunity for interested parties to share information, research, and ideas on tobacco product marketing descriptors that may be considered similar to the prohibited terms "light," "mild," and "low." This information will be used to further FDA's efforts to reduce misleading and deceptive advertising practices.

[Read the Federal Register Notice](#)

[CHANGES AFTER ORIGINAL QUALIFICATION - manufacturers or importers of tobacco products or processed tobacco, export warehouse proprietors](#)

CHANGE IN PROPRIETORSHIP

A change in proprietorship occurs when there is a change in the entity which owns and operates the business. It is synonymous with a change in ownership. One common type of change in proprietorship is a conversion from one type of business entity to another, for example, a change from sole proprietorship to a Limited Liability Company (LLC) or from a partnership to a corporation. Any change in proprietorship or ownership results in the original business entity no longer owning or operating the business that holds the permit as a manufacturer or importer of tobacco products or processed tobacco or as an export warehouse proprietor under the Internal Revenue Code of 1986 (IRC), Title 26, United States Code, Chapter 52.

The IRC provides that a person shall not engage in the business as a manufacturer or importer of tobacco products or processed tobacco or as an export warehouse proprietor without a permit to engage in such business. In addition, the IRC provides that every person, before commencing business as a manufacturer of tobacco products or cigarette papers and tubes, or as an export warehouse proprietor, must file a bond, and no person shall engage in such businesses until receiving notice of approval of such bond.

Under the regulations issued under the IRC, if a transfer is to be made in the ownership

THIS ISSUE

Greetings! We hope you are off to a great and happy 2010! This edition includes an FDA notice on use of certain terms and the requirements for reporting changes after original qualification.

If you have content ideas or questions for the editors please send them to:

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of a business, the manufacturer, importer, or export warehouse proprietor must give notice, in writing, to the appropriate TTB officer, naming the proposed successor and the desired effective date of the transfer. Additionally, the successor must, before commencing operations, qualify for the appropriate permit and must file and receive notice of approval for any required bond. To ensure continuity of operations, all conditions and requirements of the IRC and TTB regulations must be met. Therefore, it is imperative that the successor file an application, bond and/or other qualifying documents in advance of the proposed effective date of the change. If a change in proprietorship occurs prior to the filing and approval of the new application and bond (where applicable) all regulated operations must cease until approval is granted in writing by TTB. Continued business operation by the successor without such approval is in violation of the IRC and can result in a referral for potential criminal prosecution, in administrative action, and in assessment of tax.

CHANGE IN CONTROL

A change in control can either be a change in legal or actual control within a business entity holding a permit as a manufacturer or importer of tobacco products or processed tobacco or as an export warehouse proprietor under the IRC. A change in legal control occurs when there has been a change in the person who owns or controls the majority of voting stock in a corporate entity. A change in actual control occurs when there is a change in the person who exercises managerial control over the operations of the business. Examples of changes in actual control include changes in partnership ownership interest, in LLC membership ownership, and in officers and directors of a corporation or other business entity.

TTB regulations provide that, upon a change in legal or actual control, a business entity's permit automatically terminates unless the manufacturer, importer, or export warehouse proprietor files a new application for permit within 30 days of the change in control. If an application for a new permit is filed within the required 30-day period, the present permit will remain in effect until TTB takes final action on the new application.

In addition, if a new LLC member or stockholder holds more than 10 percent stock or interest, and is not already on record, a Personnel Questionnaire, [TTB Form 5000.9](#), must be filed.

If you have questions about reporting changes after original qualification, please contact the National Revenue Center at 1-877-882-3277 or 513-684-3334; or e-mail TTB at ttbquestion@ttb.gov.

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