

2009 TTB Expo Presentation

Alcohol Wholesalers

Presented by

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Brewery and Wholesaler/Importer Applications
Section NRC



Background

Calendar Year 2008 Statistics:

- Received:
 - 1,169 importer applications
 - 1,882 wholesaler applications
- Issued:
 - 849 importer basic permits
 - 1,531 wholesaler basic permits

Background (Continued)

- Total Regulated Beverage Industry Members (as of May 2009):
 - Importers – 9,673
 - Wholesalers – 17,547
 - Wineries – 6,589
 - DSP – 656
 - Breweries – 1,871

Overview

- Wholesaling defined
- Need for wholesaler basic permit
- Original qualification
- TTB screening and investigative process
- Reporting changes after qualification
- Changes of control and/or ownership
- Frequently Asked Questions (FAQs)
- Presentation referrals

Definitions

- 27 CFR 1.10 defines:
 - ***Resale at wholesale.*** A sale to any trade buyer
 - ***Trade buyer.*** Any person who is a wholesaler or retailer of distilled spirits, wine, or malt beverages

Need for Permit

Why do I need a Federal wholesaler basic permit?

- 27 CFR 1.22 reads:
 - No person, except pursuant to a basic permit issued under the Act [FAA Act], shall:
 - (a) Engage in the business of purchasing for resale at wholesale, distilled spirits, wine, or malt beverages; or,
 - (b) While so engaged, receive, sell, offer or deliver for sale, contract to sell, or ship in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

Original Qualification

Original Qualification

- **TTB F 5100.24** — Application for Basic Permit Under the Federal Alcohol Administration Act
- **TTB F 5630.5(d)** — Alcohol Dealer Registration

Original Qualification (Continued)

- Common errors on application:
 - Block 1 – Entity Name/State Organized
 - Block 4 – Operating Name
 - Block 5 – Labeling Trade Name
 - Block 8 – Titles/Source of Funds
 - Block 9 – Social Security Number
 - Block 11 – Charges/Convictions
 - Block 12 – Title/Original Signature

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DEPARTMENT OF THE TREASURY
 BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
APPLICATION FOR BASIC PERMIT UNDER THE FEDERAL ALCOHOL ADMINISTRATION ACT

1. FULL NAME AND PREMISES ADDRESS
National Importers and Wholesalers, Inc.
 550 Main St., Room 8002
 Cincinnati, OH 45202

2. EMPLOYER IDENTIFICATION NUMBER (EIN)
(Social Security number is not acceptable)
 93-9999999

3. OPERATING NAME (USA), if any
 National Importers and Wholesalers

4. LABELING TRADE NAME(S), if any
 International Importing Company

5. TELEPHONE NUMBER (513) 555-1212
 State in which organized for Corporations and Limited Liability Companies (LLC): Ohio

6. MAILING ADDRESS (if different from premises address)
 P. O. Box 550
 Cincinnati, OH 45202

7. BUSINESS(ES) TO BE CONDUCTED AT PREMISES ADDRESS (Check applicable boxes)

<input type="checkbox"/> DISTILLED SPIRITS PLANT (BEVERAGE)	<input type="checkbox"/> IMPORTING INTO THE UNITED STATES
<input type="checkbox"/> DISTILLING	<input type="checkbox"/> DISTILLED SPIRITS
<input type="checkbox"/> WAREHOUSING AND BOTTLING DISTILLED SPIRITS	<input type="checkbox"/> WINE
<input type="checkbox"/> BLENDING WINE	<input type="checkbox"/> MALT BEVERAGES
	<input type="checkbox"/> PURCHASING FOR RESALE AT WHOLESALE
	<input type="checkbox"/> DISTILLED SPIRITS
	<input type="checkbox"/> WINE
	<input type="checkbox"/> MALT BEVERAGES

or while so engaged, sell, offer, or deliver for sale, contract to sell, or ship in interstate or foreign commerce the alcoholic beverages so distilled produced, rectified, blended or bottled, warehoused and bottled, imported or purchased for resale at wholesale.

8. REASON FOR THE APPLICATION

<input type="checkbox"/> NEW BUSINESS Anticipated start date _____	<input checked="" type="checkbox"/> CHANGE IN OWNERSHIP Date of Change April 1, 2004 Name, address and permit number(s) of predecessor International Importing, L.P. 1212 Importation Lane, Suite 700 Cincinnati, OH 45202 OH-1-22004, OH-P-23008
<input type="checkbox"/> CHANGE IN CONTROL (Actual or Legal) Submit Basic Permit(s) with this application. Date of Change _____	

9. OWNER INFORMATION (List sole owner, all general partners, LLC member/managers, corporate officers and directors, and shareholders with more than 10% voting stock. Each listed person must also furnish the information in Item 9.)

NAME	TITLE	% VOTING STOCK INTEREST (if applicable)	INVESTMENT IN BUSINESS (Item 8)	SOURCE OF FUNDS INVESTED (savings, loans, gift or specify other)
John D. Doe	President	50%	\$5,000.00	Savings Federal Savings Bank
Doris R. Doe	Vice President	50%	\$5,000.00	1001 Independence St. Cincinnati, OH 45200

IF APPLICANT IS ACTUALLY OR LEGALLY CONTROLLED BY PERSONS OR BUSINESSES NOT IDENTIFIED ABOVE, PROVIDE ON A SEPARATE SHEET INFORMATION (as specified for Item 9) FOR EACH PERSON OR BUSINESS AND STATE THE EXTENT AND MANNER OF THE CONTROL. BUSINESSES SHOULD INCLUDE THEIR EIN.

10. COMPLETE FOR EACH PERSON LISTED IN ITEM 9.

a. FULL GIVEN NAME Jonathan D. Doe	b. DATE AND PLACE OF BIRTH Jan. 10, 1957 Arlington, Ohio	c. SOCIAL SECURITY OR EMPLOYER IDENTIFICATION NUMBER 555-55-5555	d. ARE YOU A U.S. CITIZEN? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
e. GENDER <input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE	f. OTHER NAMES USED (Widow name, nicknames, etc.) Jon Smith		

11. RESIDENCE(S) OVER THE LAST FIVE YEARS
 555 Jersey Lane, Smithsonian, OH 45535
 7489 Lincoln St., Apt. 5B, Midwest, OH 48342

Entity name
State Organized

Operations being conducted

Owners, Officers,
Directors, Partners,
& Members

Personal info for
those listed
in Item 8

EIN

#4 Operating Name
#5 Labeling Trade Name

Source of Funds

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Personal info
cont'd

a. FULL GIVEN NAME Doris R. Doe	b. DATE AND PLACE OF BIRTH 8/12/1970 Cincinnati, Ohio	c. SOCIAL SECURITY OR EMPLOYER IDENTIFICATION NUMBER 888-88-8888	d. ARE YOU A U.S. CITIZEN? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
e. <input type="checkbox"/> MALE <input checked="" type="checkbox"/> FEMALE		f. OTHER NAMES USED (Maiden name, nicknames, etc.) Doris Ann Smith	
g. RESIDENCE(S) OVER THE LAST FIVE YEARS 8892 S. Independence Circle Tri-County, OH 45321			
a. FULL GIVEN NAME	b. DATE AND PLACE OF BIRTH	c. SOCIAL SECURITY OR EMPLOYER IDENTIFICATION NUMBER	d. ARE YOU A U.S. CITIZEN? <input type="checkbox"/> YES <input type="checkbox"/> NO
e. <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE		f. OTHER NAMES USED (Maiden name, nicknames, etc.)	
g. RESIDENCE(S) OVER THE LAST FIVE YEARS			
a. FULL GIVEN NAME	b. DATE AND PLACE OF BIRTH	c. SOCIAL SECURITY OR EMPLOYER IDENTIFICATION NUMBER	d. ARE YOU A U.S. CITIZEN? <input type="checkbox"/> YES <input type="checkbox"/> NO
e. <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE		f. OTHER NAMES USED (Maiden name, nicknames, etc.)	
g. RESIDENCE(S) OVER THE LAST FIVE YEARS			
a. FULL GIVEN NAME	b. DATE AND PLACE OF BIRTH	c. SOCIAL SECURITY OR EMPLOYER IDENTIFICATION NUMBER	d. ARE YOU A U.S. CITIZEN? <input type="checkbox"/> YES <input type="checkbox"/> NO
e. <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE		f. OTHER NAMES USED (Maiden name, nicknames, etc.)	
g. RESIDENCE(S) OVER THE LAST FIVE YEARS			

Charges/
Convictions

10. HAS THE APPLICANT OR ANY PERSON LISTED FOR ITEMS 8 OR 9 EVER BEEN DENIED A PERMIT, LICENSE OR OTHER AUTHORIZATION TO ENGAGE IN ANY BUSINESS TO MANUFACTURE, DISTRIBUTE, IMPORT, SELL OR USE ALCOHOL PRODUCTS (beverage or nonbeverage) BY ANY GOVERNMENT AGENCY (Federal, State, local or foreign) OR HAD SUCH PERMIT, LICENSE OR OTHER AUTHORIZATION REVOKED, SUSPENDED OR OTHERWISE TERMINATED?
 YES. State details of each event on a separate sheet. NO

11. HAS THE APPLICANT OR ANY PERSON LISTED FOR ITEMS 8 OR 9 EVER BEEN ARRESTED FOR, CHARGED WITH, OR CONVICTED OF ANY CRIME UNDER FEDERAL, STATE OR FOREIGN LAWS other than traffic violations or convictions that are not felonies under Federal or State law.
 YES. State details of each event on a separate sheet. NO Jonathan Doe charged with DUI 1/12/2000 - Attended driving school and paid \$900 fine.

ATF MAY REQUIRE additional information to process this application. If you are applying for a basic permit to operate a distilled spirits plant or bonded wine premises, you must also file additional forms and information required under the Internal Revenue Code. **OPERATION WITHOUT A PERMIT.** Criminal and administrative actions may be taken against persons engaged in a business listed in Item 6 of this form if it is not conducted pursuant to an FAA Act basic permit.

APPLICANT'S AFFIRMATION. Under penalties of perjury, I declare that I have examined this application, including accompanying statements, and to the best of my knowledge and belief, it is true, correct and complete. The applicant will immediately notify the ATF official with whom this application is filed of any change in ownership, management, or control of the applicant (in the case of a corporation, any change in the officers, directors, or persons holding 10 percent or more of the corporate stock). The business for which this application is made does not violate the law of the State in which the business will be conducted. In addition, if this application is approved, the applicant will conduct operations within a reasonable period of time and maintain such operations in conformity with Federal law.

Signature/Title/Date

12. APPLICANT'S SIGNATURE (Sole owner, partner, corporate officer, LLC member or manager, or if designated agent, submit ATF F 5000.8) Doris Doe	13. TITLE OF PERSON SIGNING Vice President	14. DATE August 10, 2004
15. E-MAIL (INTERNET) ADDRESS (optional):		

Original Qualification (Continued)

Signing Authority:

- Person signing Application for Basic Permit, TTB F 5100.24, must have signature authority
- TTB F 5100.1 – Signing Authority for Corporate and LLC Officials
- TTB F 5000.8 – Power of Attorney
- Corporate Document specifying signature authority

Original Qualification (Continued)

- These additional forms are only submitted as needed:
 - TTB F 5000.8 — Power of Attorney
 - TTB F 5000.9 — Personnel Questionnaire

TTB Screening and Investigative Process

TTB Screening and Investigative Process

- Application is submitted to National Revenue Center (NRC) in Cincinnati, OH
- Specialist will review application and background check results
- Specialist will contact you to correct any errors and obtain any missing information
- Required information:
 - Legible photocopy of Driver's License or official State ID card of primary contact person who will be interviewed by phone by TTB regarding application

TTB Screening and Investigative Process (Continued)

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

Reporting Changes after Original Qualification

Reporting Changes after Original Qualification

- Filed with NRC on either Letterhead or TTB F 5100.18:
 - Change of Address/Location
 - Change of Entity Name/Operating Name
 - Addition/Deletion of Trade Names
 - Addition/Deletion of Commodities
 - Addition/Deletion of Officers, Directors, Shareholders, Members, etc.
- Must be signed by someone with signature authority on file

Reporting Changes after Original Qualification (Continued)

- Basic permit cancellation:
 - Filed with NRC on Letterhead
 - Must be signed by someone with signature authority on file
 - Surrender original basic permit or statement basic permit cannot be located and will submit when/if found

Changes in Control and/or Ownership

Change(s) in Control

- Change in legal control occurs when there has been change in ownership of majority interest (over 50%) of shares in voting stock of corporation
- Change in actual control is broader — these are changes in who actually manages or controls affairs of business
- Basic permits are not transferrable! Must file new TTB F 5100.24 within 30 days of change

Change(s) in Ownership

- Change in ownership occurs when company's business is purchased, and includes change in business entity type (e.g., sole proprietor to corporation, etc.); existing entity no longer owns business
- Change in ownership can also be change in actual control
- Basic permits are not transferrable! Must file new TTB F 5100.24 within 30 days of change

Frequently Asked Questions

Frequently Asked Questions (FAQs)

- **How Long Does it Take to get my Permit?**
 - NRC tries to process all applications within 65 days of receipt
 - Could take longer if application has problems or application is investigated

FAQs (Continued)

- **Can I Wholesale *and* Import?**
 - Okay at Federal level but must first obtain importer basic permit and label approval
 - State issue — Check with Alcohol Beverage Control (ABC) Board
 - Federal law cannot usurp State law; must be compliant with all State laws and local ordinances

FAQs (Continued)

- **Are There Other Issues I Should be Concerned with?**
 - State ABC licenses
 - FDA — Bioterrorism Act (www.fda.gov); if product comes to rest (warehouse) must be registered
 - Zoning — you must be in compliance with local zoning ordinances
 - Bottom line — Federal law cannot usurp State law; must be compliant with all State laws and local ordinances

FAQs (Continued)

- **Can I Operate out of my House?**
 - Okay at Federal level
 - State ABC may or may not allow it
 - Bottom line — must be compliant with all State laws and local ordinances

FAQs (Continued)

- **Can I Sell Into all 50 States?**
 - Federal basic permit allows you to sell into all States
 - BUT — State law may allow/prevent you depending on your circumstances
 - ALWAYS — check with each State you plan on selling in
 - ABC Boards link at www.ttb.gov (Distilled Spirits Tab > Alcohol Beverage Control Boards under Quick Links)

FAQs (Continued)

- **Do wholesalers pay Federal excise tax? No!**
Cost passed on from manufacturer/importer.
- Wholesaler – already paid by importer or manufacturer
- Importer – pay to U.S. Customs
- Distilled Spirits: \$13.50 proof gallon
- Beer: \$18.00 per barrel
- Wine:
 - $\leq 14\%$ – \$1.07 wg
 - $>14\% \leq 21\%$ – \$1.57 wg
 - $>21\% \leq 24\%$ – \$3.15 wg
 - Artificially carbonated – \$3.30 wg
 - Champagne and Sparkling – \$3.40 wg

FAQs (Continued)

- **What are the Requirements for Hard Cider?**
 - Still wine derived primarily from apples or apple concentrate and water
 - Containing no other fruit products, and containing at least $\frac{1}{2}$ of 1%, and less than 7%, alcohol by volume
 - FET — 22.6 cents per wine gallon
 - No Federal basic permit required to wholesale or import

FAQs (Continued)

- **What about Recordkeeping?**
 - Receipts and records must be retained for not less than 3 years
 - Available, during business hours, for investigation
 - 27 CFR, Part 31 – Alcohol Beverage Dealers
 - Subpart O, §§ 31.221 – 31.238

FAQs (Continued)

- **Do Wholesalers ever Need a COLA?**
 - Yes, when relabeling
- Otherwise:
 - Importer or manufacturer applies for label approval
 - Custom Crush – Winery obtains COLA

FAQs (Continued)

- **Where Are my Permits Processed?**
 - Permit applications are processed at NRC
 - Address:
550 Main Street, Ste. 8002
Cincinnati, OH 45202-5215

FAQs (Continued)

- **How much Special Occupational Tax (SOT) do I Owe?**
 - Importers and wholesalers are no longer required to pay SOT – Congress permanently repealed payment
 - Still required to file TTB Form 5630.5(d), Alcohol Dealer Registration, when beginning business, any time there is change such as address or ownership, or discontinuance of business

FAQs (Continued)

- **Do I Renew my Basic Permit?**
 - No! Basic permits are not renewed
 - Permits stay in effect until suspended, revoked, annulled, voluntarily surrendered, or automatically terminated (e.g., when there is change in ownership or control)

FAQs (Continued)

- **How can I Access Federal Laws and Regulations?**
 - On www.ttb.gov under Information by Topic, click on United States Code or Code of Federal Regulations under Laws and Regulations
 - U.S. Code – Title 26 Internal Revenue Code
 - U.S. Code – Title 27 Intoxicating Liquors
Chapter 8 – FAA Act
 - CFR Title 27 – Alcohol, Tobacco Products and Firearms

FAQs (Continued)

- **Which Regulations Pertain to Me?**
 - 27 CFR ...
 - Part 1 – Basic Permit Requirements under FAA Act
 - Part 28 – Exportation of Alcohol
 - Part 31 – Alcohol Beverage Dealers

FAQs (Continued)

- **Which Laws Pertain to Me?**
 - Title 27, United States Code, Chapter 8, Federal Alcohol Administration Act, Sections 201 – 212
 - Title 26, Internal Revenue Code

FAQs (Continued)

- **Do I Need a Basic Permit for my Storage Warehouse?**
 - No – if you just store product there, you are not required to get basic permit
 - Yes – if you make sales or invoice there, you would then be required to obtain basic permit for that location
 - Exception – some States require basic permits for bailment warehouses in control States (e.g., North Carolina and Ohio)

FAQs (Continued)

- **Can I Direct Ship into Other States?**
 - State issue – you must check with each State's ABC you ship into or through
 - Liquor Law Repeal and Enforcement Act (Webb-Kenyon Act) prohibits shipments of alcohol beverages from one State into another State in violation of any law of the receiving State ([27 U.S.C. 122](#))
 - See Industry Circular 1996-3
 - See ATF Ruling 2000-1

FAQs (Continued)

- **What about Internet Sales?**
 - State issue
 - See Industry Circular 1996-3

FAQs (Continued)

- **Where Can I Get the Forms I Need?**
 - On www.ttb.gov, click on the FORMS link on left side of our homepage
 - Then, “View All TTB Forms” or select by “Commodity” or “Frequently Requested TTB Forms”

FAQs (Continued)

- **Do I Need a Power of Attorney?**
 - Yes, if you wish to sign documents or act on behalf of applicant or permit holder
 - Signing authority is usually authorized by articles of incorporation, bylaws, board of directors, partnership agreements, or operating agreements

Presentation Referrals

- We recommend that you attend some other Expo presentations related to wholesaling:
 - Alcohol Importing
 - Export Documentation – Alcohol
 - TTB Audits and Investigations
 - FDA – Bioterrorism

Contact Us

National Revenue Center:
1-877-882-3277

Brewery & Wholesaler/Importer
Applications Section:
(513) 684-3337

www.ttb.gov