Pathways for Approval for Post-PMTA Product Modifications

October 25, 2019

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Moderated by **Elizabeth Oestreich,** Vice President, Regulatory Compliance, Greenleaf Health

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AGENDA:

- Current state of modifications
- Why are we discussing this topic?
- Presentations
- Discussion on FDA’s proposed rule and implementation
- Questions

New Tobacco Product

Section 910(a)(1) of the FD&C Act defines a new tobacco product as:

- Any tobacco product (including those products in test markets) that was not commercially marketed in the US as of February 15, 2007 or

- Any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed after February 15, 2007.

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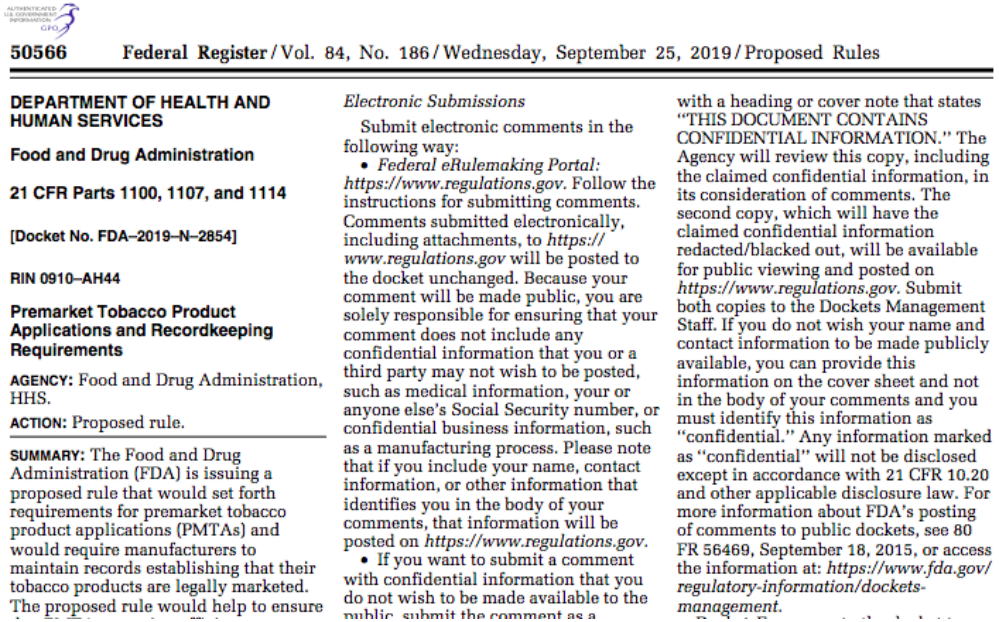
Premarket Tobacco Product Applications and Recordkeeping Requirements Proposed Rule – September 25, 2019

Comment period closes on November 25, 2019



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1100, 1107, and 1114

[Docket No. FDA–2019–N–2854]

RIN 0910–AH44

Premarket Tobacco Product Applications and Recordkeeping Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a proposed rule that would set forth requirements for premarket tobacco product applications (PMTAs) and would require manufacturers to maintain records establishing that their tobacco products are legally marketed. The proposed rule would help to ensure

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a

with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.fda.gov/regulatory-information/dockets-management.*

FDA'S CENTER FOR TOBACCO PRODUCTS:

PATHWAY FOR APPROVAL OF POST-PMTA PRODUCT MODIFICATIONS

Matthew R. Holman, Ph.D.
Director
Office of Science
Center for Tobacco Products

Disclaimer: This is not a formal dissemination of information by FDA and does not represent Agency position or policy.

WHAT DOES THE PMTA RULE PROPOSE?

- Basic content and format
- General review procedures
  - From application receipt to order issuance
  - Communications from FDA
- Recordkeeping
  - Establishing that tobacco product is legally marketed
- Inspections

WHAT DOES THE PMTA RULE PROPOSE?

- Electronic submission requirement
- Refuse To Accept (RTA) criteria
  - Must meet minimal content & format requirements
- Refuse To File (RTF) criteria
  - Must include substantive information on product health risks, comparative tobacco product information, abuse liability, actual use, likelihood of changes in use behavior by current users and non-users, & consumer perceptions

WHAT ARE SOME BENEFITS OF THE PMTA RULE?

- Helps ensure that PMTAs contain sufficient information for FDA to determine whether to issue a marketing order
- Facilitates submission of streamlined PMTAs
  - Supplemental PMTA & Resubmission
  - Reduces burden on FDA & applicants
- Creates postmarket reporting requirements
  - Allows FDA & applicants to assess public health impact of product marketing

WHAT ARE SOME BENEFITS OF THE PMTA RULE?

- Describes how to use scientific literature to bridge to new product
  - Data on products other than new product can be informative

- Clarifies the 180-day review period
  - Describes when FDA may pause or extend the review clock

SUPPLEMENTAL PMTA

Proposed § 1114.15

"Applicants that *have received a marketing order* for a tobacco product may…submit a supplemental PMTA to seek marketing authorization for modifications to such product… Supplemental PMTAs must include *new information concerning modifications* that create the new tobacco product but allow the applicant to satisfy the remaining application requirements *by crossreferencing applicable content from the previously submitted PMTA* for the original tobacco product. Applicants may submit supplemental PMTAs *only for modifications that require the submission of limited new information*."

SUPPLEMENTAL PMTA

Potentially Appropriate for Supplemental PMTA

- Modification to meet product standard (if specified by FDA)
- Changes in connection type/thread size
- Minor software changes not affecting device functionality
- Minor changes in e-liquid volume, viscosity or boiling temperature
- Minor changes in draw resistance
- Minor changes in air flow rate
- Changes to coil configuration if number of coils, coil gauge, material, and overall coil resistance remain unchanged
- Changes to amount of wicking material
- Minor changes in wick ignition temperature

SUPPLEMENTAL PMTA

Likely *Not* Appropriate for Supplemental PMTA

- Modification that might increase risk of harm to individual health from the product
- Modifications that may alter tobacco product use behavior and initiation, such as modifications that have strong youth appeal
- Design modifications that change the category or subcategory of the product (*e.g.*, modifying a closed e-cigarette to be an open e-cigarette)

SUPPLEMENTAL PMTA

Not Allowed for Supplemental PMTA

- Marketing order for the original tobacco product has been
  - Withdrawn
  - Temporarily suspended
  - Is subject of temporary suspension or withdrawal proceedings by FDA

- FDA may authorize exception to the situations above
  - Applicant must request exception
  - If reason for the temporary suspension or withdrawal is unrelated to sufficiency or reliability of information in the PMTA

WHY IS CTP PROPOSING SUPPLMENTAL PMTA?

- Reduces review burden on CTP
  - Not reassessing information that has already been evaluated
- Maintains rigorous standard for issuing marketing orders
  - Doesn’t change legal or scientific requirements for order
- Consistent with other FDA Centers
  - Ex: NDA supplements

WHY IS CTP PROPOSING SUPPLMENTAL PMTA?

- Allows for faster marketplace changes that are positive for public health
  - Ex: Compliance with product standards
  - Ex: Safety improvements

- Allows applicant to avoid resubmitting information already provided to CTP
  - Doesn’t slow down speed of positive marketplace changes
  - Provides information to CTP in most useful way

CONCLUSION

- Proposed rule provides public with CTP's thinking on PMTAs
  - Read it carefully
  - Preamble outlines why we are proposing what is captured in codified

- Supplemental PMTAs are important creation
  - Allows focusing of resources are most salient information

- All stakeholders should provide comments to the proposed rule by November 25
  - CTP evaluates all comments in preparing the final rule

Pathways for Approval of Post-PMTA Modifications

Patricia M. Miller, Esq.
Senior Director, Regulatory Affairs
Altria Client Services

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Importance of Modifications – Technology Changes Rapidly

2009

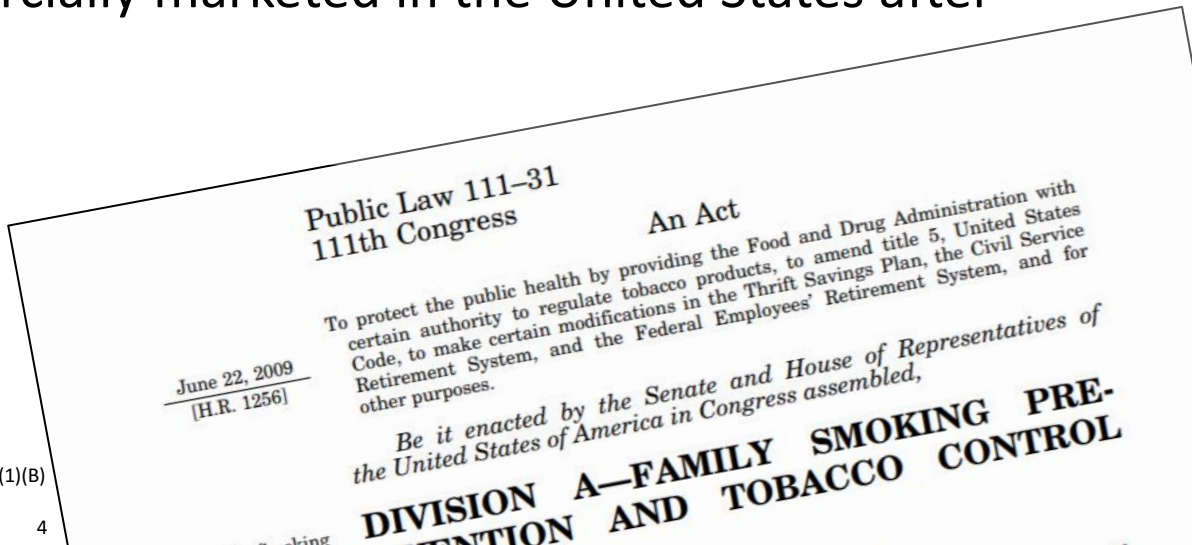
2019

Potential Drivers of Product Modifications

- Consumer Complaints
- Product Safety Concerns
- Product Misuse
- Technology to Prevent Youth Access
- Supplier Issues
- Manufacturing Efficiencies

Modifications Can Create a “New” Product

New Tobacco Product means…any modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after February 15, 2007.



Public Law 111–31
111th Congress

An Act

June 22, 2009
[H.R. 1256]

To protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DIVISION A—FAMILY SMOKING PREVENTION AND TOBACCO CONTROL

Tobacco Control Act § 910(a)(1)(B); 21 USC § 387j(a)(1)(B)

Current Product Change Pathways

Substantial Equivalence:

- Requires predicate product
- Same characteristics, or different characteristics but product does not raise different questions of public health

SE Exemption:

- Legally marketed product
- Modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive
- Minor modification

Tobacco Control Act § 905(j)

Current Product Change Pathways

PMTA Marketing Orders

- Limited post-authorization changes implied by periodic reporting:
  - Changes to manufacturing process, facilities, or controls *(that do not result in product modification)*
  - Final printed labeling, with description of all changes

FDA NEWS RELEASE

FDA permits sale of IQOS Tobacco Heating System through premarket tobacco product application pathway

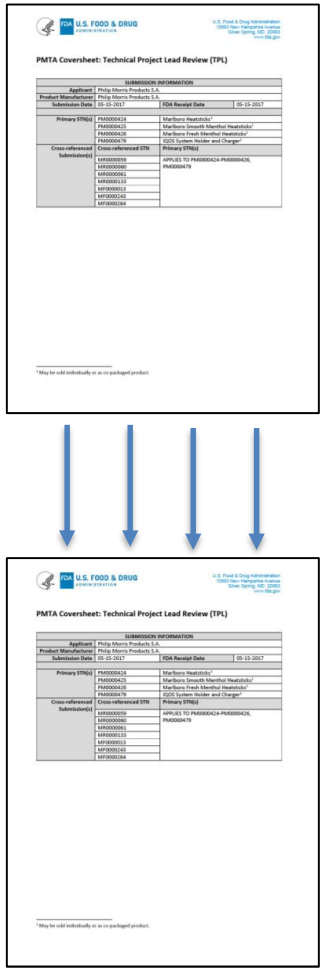
Agency places stringent marketing restrictions on heated tobacco products aimed at preventing youth access and exposure to the new products

For Immediate Release:

April 30, 2019

Proposed Supplemental PMTA – Overview

- Alternative PMTA format to reduce the burden associated with submission and review
- "Submission of limited information or revisions to the PMTA to make it apply to the modified tobacco product."[1]
- Can be used to comply with a product standard under § 907
- Format/content – 1) New content sections; 2) Cross-referenced content sections
- Certification of no other modifications



1. *Premarket Tobacco Product Applications and Recordkeeping Requirements Proposed Rule, September 2019*

Proposed Supplemental PMTA Assessment

Proposed Supplemental PMTA Strengths

- Creation of streamlined pathway
- Builds from § 910 framework
- Clear guidance on proposed content
- Helpful examples of modifications – for ENDS, at least

Potentially Appropriate for Supplemental PMTA Format

• Changes in connection type/thread size (*e.g.*, 510).
• Minor Software Changes not affecting device functionality.
  ○ Changes to user interface.
  ○ Changes in recording/data capture properties.
• Minor changes in e-liquid volume, viscosity or boiling temperature.
• Minor changes in draw resistance.
• Minor changes in air flow rate.
• Changes to coil configuration if number of coils, coil gauge, material, and overall coil resistance remain unchanged.
• Changes to amount of wicking material.
• Minor changes in wick ignition temperature.

Likely Not Appropriate for Supplemental PMTA Format
• Any modification that might increase risk of harm to individual health from the product. • Modifications that may alter tobacco product use behavior and initiation, such as modifications that have strong youth appeal. • Design modifications that change the category or subcategory of the product (*e.g.*, modifying a closed e-cigarette to be an open e-cigarette).

Proposed Supplemental PMTA Assessment

Ambiguity of Supplemental Pathway Access

"…only for a modification or modifications that require the submission of limited information…"

"applicant would not be able to submit…to the extent that reviewing a supplemental application would be…confusing, cumbersome, or otherwise inefficient…"

"Changes that require multiple, sweeping, or difficult-to-trace changes…would be more efficient to review in full text format…"

Premarket Tobacco Product Applications and Recordkeeping Requirements Proposed Rule, September 2019 (Emphasis added)

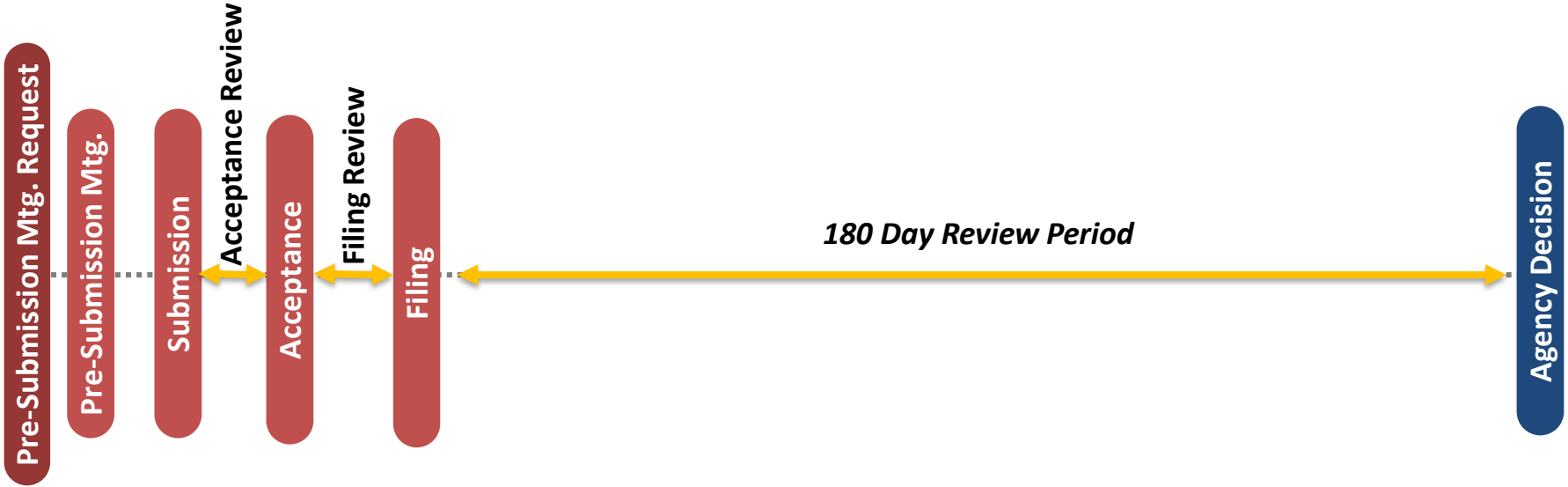
Proposed Supplemental PMTA Assessment

Length of Review Period

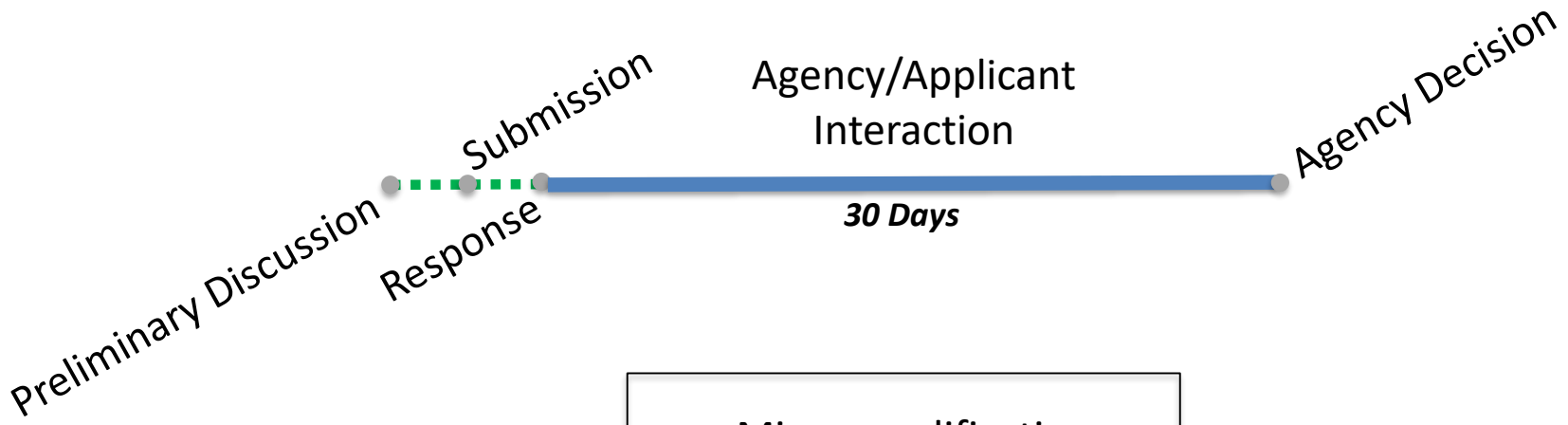
- Length of supplemental PMTA review process not specified in Proposed Rule or preamble
- PMTA = 180-day review period?
- But – "FDA estimates further that a supplemental PMTA will take 25 percent of the time it takes to do an original submission…"[1]

1. *Premarket Tobacco Product Applications and Recordkeeping Requirements Proposed Rule, September 2019*

PMTA Timeline



Possible Review for Minor Modifications



- Minor modifications
- Interaction with FDA
- Abbreviated timeline