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Comments of James Calvin, President
New York Association of Convenience Stores

concerning

Docket No. FDA-2016-N-2527

July 6, 2017

The New York Association of Convenience Stores is a private, not-for-profit trade organization representing neighborhood mini marts and convenience stores statewide, most of which are licensed by the State of New York to sell legal tobacco products to adult customers in a socially responsible manner.

Our member retailers have grown increasing concerned about the looming impact of the above-captioned rule on their ability to continue selling smokeless tobacco products to age-verified customers.

If finalized, proposed rule FDA-2016-N-2527 would require unrealistic reductions in the level of a tobacco-specific nitrosamine known as N-nitrosonornicotine (NNN) found in smokeless tobacco.

It would set the limit for NNN at 1 part per million, a standard that our suppliers advise us is technically not achievable and therefore would have the effect of banning most U.S. smokeless tobacco products. This would inflict severe economic hardship on New York convenience stores, whose viability relies in part not only on the sale of smokeless tobacco itself but on purchases of ancillary products made by smokeless tobacco customers.

We understand that NNN occurs naturally in tobacco and can be formed during growing, curing, manufacturing and distribution, and that weather can contribute to its formation despite the good-faith efforts of tobacco farmers and manufacturers to limit NNN levels.

Under the Family Smoking Prevention & Tobacco Control Act, any tobacco product standard established by the FDA must be technically achievable and consider economic impact. Establishing a limit for NNN of 1 ppm is unachievable, and would have a negative economic impact on retailers of smokeless tobacco products by depriving them of the ability to continue selling the product to adult customers.

We note that the FDA did not first seek public comments through an Advance Notice of Proposed Rulemaking before issuing this proposed rule, as it has done on five previous occasions with other important topics. Retailers directly affected should have been heard before the FDA published its proposal.

Moreover, the FDA published the proposed rule after the White House issued a memo calling for a freeze on all pending regulation.

For the aforementioned reasons, we respectfully call upon the FDA to withdraw its proposed product standard regarding NNN.

Thank you for the opportunity to comment.