

December 27, 2019

Director Mitch Zeller  
Center for Tobacco Products  
U.S. Food & Drug Administration  
10903 New Hampshire Avenue  
Silver Spring, MD 20993

**RE: Implementation of Age 21 Restriction on Tobacco Sales**

Dear Director Zeller:

As national organizations representing responsible retailers of tobacco products, we are writing to emphasize the need for an orderly implementation of the new age limit of 21 for tobacco sales across the United States. For decades, most of the United States has followed laws stating that individuals had to be at least 18 years of age to purchase tobacco products. That has been the federal rule since the establishment of the Center for Tobacco Products.

Appropriations legislation, which was signed on December 20<sup>th</sup>, however, included a provision prohibiting tobacco sales to anyone under the age of 21. That law also gives the FDA 180 days to write regulations to implement the new age requirement and states that the regulations are to go into effect no more than 90 days after regulations are finalized. Without reference to the timelines in the law for implementation of this new requirement, FDA's website was updated on December 20<sup>th</sup> to include the following statement:

“Note: On December 20, 2019, the President signed legislation to amend the Federal Food, Drug, and Cosmetic Act, and raised the federal minimum age of sale of tobacco products from 18 to 21 years. It is now illegal for a retailer to sell any tobacco product – including cigarettes, cigars and e-cigarettes – to anyone under 21. FDA will provide additional details on this issue as they become available.”

That same webpage – and pages throughout FDA's website advising retailers about compliance with laws – still indicate that the federal age to purchase tobacco is 18. Of course, implementing new requirements like this takes time, for FDA and for regulated businesses.

While FDA must identify all of its regulations, guidance, webpages and other documents that need to be updated with a new age requirement, businesses have significant work to do too. Retailers, for example, must update training materials and signage. Then, they must train millions of employees across the country. To provide just one example of the logistical difficulties that retailers must address, we have been in contact with We Card which is the largest program in the nation for training retail employees on tobacco compliance. It will take We Card until April to get a sufficient quantity of new signs to supply stores across the nation with appropriate signage.

And, consumers are not ready for this change. There are customers aged 18 to 20 who have been purchasing tobacco products – some of them for a year or two – who need to understand the law is changed and they can no longer purchase these products. Retail clerks should not be the first to inform these customers that they cannot purchase the products they

want. Consumer education is desperately needed to avoid angry confrontations in stores across the nation.

Given all of this, we are asking that FDA make clear to the regulated community that it understands this transition will take some time. FDA should announce that the new age 21 restriction on tobacco product sales will not be enforced until FDA has had a chance to write new implementing regulations and for those regulations to go into effect. That way everyone can work to ensure that this transition is handled the right way and that FDA regulations are followed.

Thank you for your consideration of this request to allow the industry to most effectively implement this new requirement.

Respectfully,

Food Marketing Institute  
National Association of Convenience Stores  
National Grocers Association  
National Association of Truckstop Operators  
Petroleum Marketers Association of America  
Society of Independent Gasoline Marketers of America

cc:

Alex Azar, Secretary, U.S. Department of Health and Human Services  
Stephen Hahn, Commissioner, U.S. Food & Drug Administration  
Ann Simoneau, Director, Compliance and Enforcement Office, Center for Tobacco Products  
Beverly Chernaik, Director, Office of Regulations, Center for Tobacco Products  
Kathleen Crosby, Director, Office of Health Communication and Education, Center for Tobacco Products