Good afternoon, Sen. Chittenden,

We wanted to address the idea you posed during a recent hearing on S.198 of the possibility of creating a tobacco registry as a way of remedying some of the enforcement and youth access issues we are targeting with S.198.

I'd also like to submit this as public comment on S.198 as our organization and a number of public health organizations <u>oppose vape and nicotine product registries such as this</u> and instead favor strong tobacco retail licensure laws. These registries are ineffective, cumbersome, and in some states where they have been put in place, enforcement has been a struggle and lawsuits have been filed. Here is some background that may be of help.

In recent years, the tobacco industry has promoted state "directory" bills for e-cigarettes and nicotine products. These bills, sometimes called "registry bills," task a state agency, sometimes without providing a funding source, with creating and maintaining a list of products that can be sold in the state. In order for a tobacco product to be offered for sale in the state, the bills say the products must appear in the directory.

Typically, these directories include the short list of products that FDA has authorized for sale, but also includes the thousands that still have a pending sales application through FDA's Premarket Tobacco Product Application (PMTA) process, or are in litigation related to FDA's decision on its marketing application, but often list many more products. The PMTA process requires manufacturers to submit applications for scientific review for any new products that they want to sell in the United States and receive marketing authorization from FDA before they are marketed.

As of November 2025, through the PMTA process, FDA has authorized 39 tobacco and menthol-flavored e-cigarette products and devices and 20 flavored nicotine pouch products to be sold in the U.S. All other e-cigarette and nicotine pouch products, including those with applications still under review with FDA ("pending applications"), are illegally on the market and subject to FDA enforcement action. Ongoing lawsuits filed by groups representing vape associations and retailers have argued that state directory laws conflict with federal law, and that they favor legacy manufacturers over others.

- **Creating an e-cigarette directory is a profit-driven tactic by the major tobacco companies to cut out competitors, particularly those that manufacture disposable e-cigarettes, and to distract from proven solutions to reduce youth e-cigarette use.** These directory bills have been introduced and supported by Reynolds American, Altria and Juul to increase their market share and cut out competitors, while diverting attention from proven policies that reduce youth use.

- **These directories are unnecessary and duplicative.** FDA has already published lists of the 39 e-cigarette products and 20 nicotine pouches authorized for sale,

and a searchable database on its website. These are the only e-cigarette and nicotine pouches that can be legally sold in the U.S. under federal law. States and most localities can further limit the products that can be sold in their jurisdictions.

- **These laws encourage retailers to sell products that are illegal under federal law.** According to federal law, products without a marketing order, including those with a pending application or those that have received a Marketing Denial Order (MDO) that is being challenged, are on the market illegally. FDA has stated that "a pending application does not create a safe harbor to sell that product."

    - FDA sent letters to more than 300,000 U.S. retailers beginning in September 2025, encouraging retailers to stop selling products without marketing granted orders and reminding them that these products are illegal.
    - State e-cigarette and nicotine product directories are allowing the sale of untested or rejected e-cigarettes in the state. These directories include products that have not completed FDA's scientific review and products that FDA has denied authorization because their manufacturers could not show that they were suitable for sale in the U.S.
    - Because state e-cigarette and nicotine product directories include products with pending applications and products that have been denied marketing authorization, ongoing lawsuits from vape associations and retailers have argued that those laws conflict with federal law. Having multiple lists – especially a state directory that contradicts FDA's list – creates confusion about what products can be sold.

- **These directories do not reduce the availability of flavored and other tobacco products on the market.** Tobacco companies claim that these directories will limit the number of products sold in the state, including illegal Chinese-made products, but state directories include thousands of illegal products from the U.S, and other countries including China. For example, Oklahoma's directory has over 12,000 products, Alabama's directory has over 2,500 products, and Louisiana's directory has over 1,100 products. Sales data from Oklahoma and Alabama have not shown any remarkable change in sales trends post directory implementation. In fact, overall sales and the market share of disposable e-cigarettes have continued to increase in these states. In Louisiana, e-cigarette sales initially declined after a small e-cigarette tax increase and the directory implementation, but starting in June 2024, sales rebounded and continue to rise.

- **These directories waste state resources.** Not only do directories duplicate federal efforts, but they are expensive for states to implement and enforce. In addition to administrative and retail inspection costs, they may require additional state funds to store and dispose of confiscated products or to defend against lawsuits.

- States should not spend limited resources and revenue to set up, maintain, and enforce these directories when FDA already has lists available. Already scarce staff time and resources should be allocated toward evidenced-based policies and programs.
- These bills typically do not allocate enough resources to set up, implement, and enforce the directory, so states must tap into budget reserves to implement and enforce the law. Some states have had to redirect funds from effective health programs to administer these directories.
- States that allow products with pending PMTA applications in their directories have the extra burden of spending time reviewing documentation to try to determine whether applications have been submitted with FDA. Unfortunately, FDA has repeatedly stated that it cannot verify this information for states in order to protect confidential commercial information.
- Manufacturers can change the name and labeling of their products without filing a new PMTA application with FDA, so it is hard to verify whether any documentation submitted is for the actual product at issue.
- Seizure, storage, and disposal of non-compliant products is time consuming and expensive, because these products are considered toxic e-waste. o Many states have faced lawsuits to stop implementation of the directories, which are expensive, and the outcomes are unclear.

S.198 is an effective tool for tobacco licensure enforcement and prevention of youth access tobacco. It puts the onus on retailers to follow strong state laws to protect our youth from the harms of tobacco and not on youth who may be addicted due to aggressive industry marketing and soft state regulation.

Thanks for listening.