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VIA ELECTRONIC SUBMISSION AND HAND DELIVERY

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RE: Proposed Good Manufacturing Practices Regulation To Account For FDA's Deeming Regulation (Docket No. FDA-2013-N-022)

Dear Ms. Simoneau and Ms. Chernaik:

On January 10, 2012, various industry stakeholders[1] submitted to the United States Food and Drug Administration's ("FDA") Center for Tobacco Products for its review and consideration (1) proposed current Good Manufacturing Practice ("GMP") regulations pursuant to Section 906(e) of the Federal Food, Drug, and Cosmetic Act ("FDCA"), as amended by the Family Smoking Prevention and Tobacco Control Act ("Tobacco Control Act")[2]; and (2) a preamble to the proposed regulations, which provide a common

[1] The industry stakeholders included the following companies: R.J. Reynolds Tobacco Company; Santa Fe Natural Tobacco Company, Inc.; American Snuff Company, LLC; Altria Client Services (on behalf of Philip Morris USA Inc. and U.S. Smokeless Tobacco Company); Lorillard, Inc.; Commonwealth Brands, Inc.; Swedish Match North America; the SMARTT Coalition; Liggett Group LLC; Vector Tobacco Inc.; National Tobacco Company, L.P.; and Hail & Cotton, Inc.

[2] While Section 906(e) of the FDCA refers to "good manufacturing practices," FDA has since referred to any regulations that could be issued under section 906(e) as tobacco product manufacturing practices ("TPMP") regulations. 81 FED. REG. at 28989, fn 9. For purposes of this letter, we will continue to refer to the industry's January 2012 proposal as proposed good manufacturing practices

perspective and interpretation of the provisions of the proposed regulations. Importantly, when the industry stakeholders submitted the proposed GMP regulations, the Tobacco Control Act authorized FDA to regulate only certain enumerated categories of tobacco products: cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco. *See* 21 U.S.C. § 387a(b). However, we were mindful at that time that the Tobacco Control Act futher empowered FDA to regulate additional categories of tobacco products by issuing a regulation deeming those products subject to the Act. *See* 21 U.S.C. § 387a(b). Thus, it was understood that the proposed GMP regulations should be revisited when FDA invoked its deeming authority over additional categories of tobacco products.[3]

On May 10, 2016, FDA issued the final rule, "Deeming Tobacco Products to be Subject to the Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Product Packages and Advertisements" (hereinafter "Deeming Rule"). 81 FED. REG. 28974 (May 10, 2016) (to be codified at 21 C.F.R. Parts 1100, 1140 and 1143). FDA's Deeming Rule subjects e-cigarettes and other electronic nicotine delivery systems ("ENDS"), among all other products that were not currently regulated by FDA but that meet the definition of tobacco product under the FDCA, to FDA's tobacco regulatory authority.[4] In its preamble to the final Deeming Rule, FDA notes that "[a]fter the effective date of this final rule, FDA will have authority to issue tobacco product manufacturing practice regulations under section 906(e) of the [FDCA]" for these products. 81 FED. REG. at 29018. As newly deemed ENDS products are distinguishable from the tobacco products addressed in the January 2012 proposed GMP regulations, industry stakeholders determined it is necessary to

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("GMP") regulations. However, we will refer to the regulations to be issued by FDA under Section 906(e) as TPMP regulations to adopt FDA's recent term.

[3] On May 2, 2012, FDA and industry stakeholders met to discuss the industry proposed GMP regulations. During that meeting, FDA suggested that TPMP regulations should account for the Deeming Rule when promulgated. After meeting with the industry stakeholders, on March 19, 2013, FDA published the industry proposed GMP regulations in the Federal Register for public comment. On May 20, 2013, one of the industry stakeholders, Altria Client Services, submitted comments and agreed with FDA that TPMP regulations should account for the Deeming Rule when final.

[4] This letter supplements the January 2012 proposed GMP regulations only to address ENDS products. The ENDS industry stakeholders that are submitting this supplement believe that the January 2012 proposed GMP regulations are appropriate to govern the manufacture of the more conventional newly deemed tobacco products, such as cigars, pipe tobacco, and certain dissolvable products not already regulated by FDA, as these products are conventional tobacco products subject to inherent variability and certain inherent risks that have been identified by public health authorities to be associated with their use.

supplement the January 2012 proposed GMP regulations to account for these ENDS products and the differences in the manufacturing of such products.

As such, various ENDS product industry stakeholders take this opportunity to submit to FDA for its review and consideration the following supplement to the January 2012 proposed GMP regulations to account for ENDS products. Specifically, the industry stakeholders include the following companies: RAI Services Company on behalf of R.J. Reynolds Tobacco Company and R.J. Reynolds Vapor Company; Altria Client Services LLC on behalf of Nu Mark LLC; Fontem US, Inc.; Council of Independent Tobacco Manufacturers (CITMA); Purbacco USA, LLC; Sky Marketing Corporation dba Hometown Hero Vapor; Baker White, Inc.; S.E. Box Mods LLC; EL-O-QUENET E-Juice LLC; Global Vapor Standards Association;[5] Ballantyne Brands, LLC; Five Pawns Inc.; and Cosmic Fog Vapors LLC (collectively referred to herein as the "Companies"). The Companies welcome other ENDS manufacturers to join this supplement to the January 2012 proposed GMP regulations to FDA.

In developing this supplement to the January 2012 proposed GMP regulations, the Companies considered the following:

- The differences between ENDS products and the tobacco products addressed in the January 2012 proposed GMP regulations (cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco).

- FDA's final Deeming Rule and the Agency's preamble to the Deeming Rule.

- Section 906 of the FDCA, which requires FDA to promulgate "regulations (which may differ based on the type of product involved) requiring that the methods used in, and the facilities and controls used for, the manufacture, preproduction design validation (including a process to assess the performance of a tobacco product), packing, and storage of a tobacco product conform to current good manufacturing practice, or hazard analysis and critical control point methodology..." 21 U.S.C. § 387f(e).

- FDA's Draft Guidance, "Premarket Tobacco Product Applications for Electronic Nicotine Delivery Systems" issued in May 2016. For example, the draft guidance provides that a description of the manufacturing process should be included in a premarket tobacco product application ("PMTA") to

[5] Members of Global Vapor Standards Association include: Avail Vapor, LLC; AmeriNic, Inc.; Shenzhen IVPS Technology Co., Ltd. (SMOK); Shenzhen Smoore Technology Ltd.; Shenzhen INNOKIN Technology Co. Ltd; Shenzhen Eigate Technology Co, Ltd. (Aspire); KangerTech US; Shenzhen Joyetech Co., Ltd.; and EVE Energy Co., Ltd.

demonstrate that the product is made to conform to the product information provided in the PMTA. The draft guidance also recommends providing a list and summary of all standard operating procedures ("SOPs") and examples of relevant forms and records for designated categories of information.

The Companies believe that the following supplement, in conjunction with the January 2012 proposed GMP regulations, provide sufficient direction for the establishment of adequate manufacturing controls for ENDS products. Indeed, the January 2012 proposed GMP regulations together with this supplement provide a framework that will enable the Agency to protect the public health with respect to tobacco products and provide manufacturers with the opportunity to meet the goal of the tobacco product manufacturing practices ("TPMP") regulations in an effective manner that allows for flexibility and innovation across all tobacco product categories. The Companies believe that a meeting with FDA to discuss this supplement would be beneficial and as such, we hereby request a meeting with the Agency at its earliest convenience. (*See* Attachment A, Industry Stakeholders' Meeting Request Regarding Proposed Good Manufacturing Practices Regulation To Account For FDA's Deeming Regulation, June 7, 2017.)

ENDS PRODUCT OVERVIEW

ENDS products are intended to heat a liquid such that an aerosol is created for vaping (inhale and exhale the vapor produced) by the adult tobacco product consumer. The liquid that is heated is often referred to as "e-liquid." E-liquid consists of tobacco derived nicotine, and some combination of propylene glycol and/or glycerol (or similar compounds), other ingredients (e.g., flavors), and water. Unlike conventional tobacco products, the design and manufacture of e-liquid generally involves a nicotine content specification.

In the preamble to the final Deeming Rule, FDA provides that a "finished tobacco product" "refers to a tobacco product, including all components and parts, sealed in packaging intended for consumer use (e.g., filters, filter tubes, e-cigarettes, or e-liquids sold separately to consumers or as part of kits)."[6] Based on FDA's preamble to the final Deeming Rule, finished ENDS products referenced in this letter include ENDS products sold to consumers as a kit, which includes, for example, pre-filled e-cigarette cartridges that are sold with the e-cigarette battery assembly, and ENDS products sold separately, for example, e-cigarette cartridges, bottled e-liquid, etc. that are each sold individually.

[6] We note that the definition of "finished tobacco product" is the subject of current litigation and may be revised depending on the outcome of that litigation. *See, e.g., Nicopure Labs LLC et al. v. FDA et al.*

SUPPLEMENTAL INFORMATION TO JANUARY 2012 PROPOSED GMP REGULATIONS TO ACCOUNT FOR ENDS PRODUCTS

Unless noted otherwise, we believe that the supplement information provided below would be included as a subpart to the January 2012 proposed GMP regulations specific to ENDS products.

A. Information Provided in the January 2012 Proposed GMP Regulations that is Inapplicable to ENDS Products.

First, the January 2012 proposed GMP regulations and preamble recognizes the agricultural variability associated with certain tobacco products, including the fact that tobacco blending is both an art and a science. On the other hand, ENDS products are not subject to agricultural variability if the e-liquid is made with USP grade nicotine (or if the nicotine is made to an equivalent recognized standard). As such, FDA should take this into account when it promulgates TPMP regulations.

Second, the January 2012 proposed GMP regulations and preamble acknowledge that Congress, the U.S. Surgeon General, and public health authorities have identified certain inherent risks associated with the use of different categories of tobacco products. As such, the proposed GMP regulations require manufacturers to control the manufacturing process of these tobacco products in a manner that prevents the introduction of substances not ordinarily contained in tobacco products that would present a risk of injury to the consumer beyond that generally posed by the same category of tobacco products. (*See* Section 1.B. of the Preamble.)

As to ENDS products, FDA notes in the final Deeming Rule that additional data for ENDS products may be necessary to determine what effects these products have on individuals and public health. FDA also acknowledges that ENDS products "may reduce the risk of tobacco-related disease for individuals currently using combusted tobacco products given the products' comparative placements on the continuum of nicotine-delivering products." 81 Fed Reg. at 29030. FDA should take this into account when promulgating TPMP regulations.

B. Additions to January 2012 Proposed GMP Regulations to Account for ENDS Products.

First, the Companies believe that the scope of the TPMP regulations should apply to ENDS product manufacturers but exclude manufacturers/suppliers of accessories (which are already excluded from FDA's jurisdiction pursuant to the Agency's final Deeming Rule) and manufacturers/suppliers of components and parts that are used to make ENDS products by ENDS manufacturers. Thus, the TPMP regulations would apply to an ENDS manufacturer even if they manufacture intermediate ENDS products (e.g.,

manufacturers of e-liquid, cartridges, etc.) and do not make the "finished tobacco product" as defined in FDA's compliance policy for a "finished tobacco products" as described earlier in this document. However, manufacturers of components and parts such as battery cells and control circuitry supplied to ENDS product manufacturers would not be within the scope of the TPMP regulations. Other controls exist within the proposed TPMP regulations with respect to suppliers of components and parts (e.g., Subpart F XXX.80 General Purchasing Controls).

Second, Subpart B, XXX.35 Contamination Prevention; Subpart C, XXX.50 Plant Grounds, Facilities, and Sanitary Operations; Subpart C, XXX.53 Physical Plant Construction and Design; Subpart D, XXX.60 Equipment and Utensils; Subpart F XXX.80 General Purchasing Controls; Subpart F XXX.85 Evaluation of Suppliers; Subpart G, XXX.90 Identification; Subpart G, XXX.95 Traceability; and Subpart I, XXX.120 Receiving Acceptance and In-Process Evaluation in the January 2012 proposed GMP regulations should also include references to "components" and "parts" for completeness. For example, XXX.35 should be revised to state "You shall establish and maintain requirements for health, cleanliness, personal practices, and clothing of personnel if contact between such personnel and tobacco product, components, parts, packaging, or materials could reasonably be expected to result in contamination."

Third, the Companies believe that a hazard and critical control point ("HACCP") analysis should be performed for ENDS e-liquids and ENDS finished product manufacturing operations to allow manufacturers to address, among other things, the potential for microbial contamination.

Finally, taking into account the differences in ENDS products, the Companies believe the following should be included in TPMP regulations to account for the manufacture, packaging, labeling, or holding of ENDS products:

- A provision should be added to ensure that specified design requirements for ENDS products are met. For example, manufacturers of ENDS products should establish and maintain procedures for changes to a specification, process, or procedure that may impact the original specified design requirements. Further, prior to implementation, such changes should be properly qualified, where appropriate.

- Where the results of a process cannot be fully verified by subsequent testing and inspection, manufacturers should establish and maintain procedures for process qualification to demonstrate that the process consistently produces a product meeting its predetermined specification. Manufacturers of ENDS products should document the qualification activities and results, including the date and signature of the individual(s) approving the qualification and,

where appropriate, the major equipment qualified. Moreover, manufacturers of ENDS products should establish and maintain procedures for monitoring and controlling process parameters to ensure that the specified requirements for qualified processes continue to be met.

- Where appropriate, manufacturers of ENDS products should establish and maintain procedures for controlling and verifying the acceptability of process capability and product characteristics. Sampling plans shall be written and based on documented rationale. Further, manufacturers should establish and maintain procedures to ensure that sampling methods are adequate for their intended use and to ensure that when changes occur, the sampling plans are reviewed.

- Manufacturers of ENDS products should establish and maintain procedures to appropriately validate and approve for use test methods used to establish specifications and to determine batch conformance to specifications. Likewise, manufacturers should establish and maintain procedures to qualify as fit for intended use test methods used to establish manufacturing control parameters and to determine conformance to manufacturing control parameters. Further, manufacturers should properly perform and document calibration and maintenance for critical instrumentation used in the execution and support of test methods.

- Manufacturers of ENDS products should test samples from each batch of e-liquid and finished ENDS products, as appropriate, for conformance to specifications within reasonable, demonstrable manufacturing variance.

- Manufacturers of ENDS products should establish and maintain a written testing program designed to assess the stability characteristics of finished ENDS products (including appropriate sampling plans and use of appropriate accelerated studies). Manufacturers of ENDS products should use the results of such stability testing to determine the appropriate storage conditions and, where appropriate, expiration dates.

- Manufacturers of ENDS products should retain an appropriate number of reserve samples of the e-liquid containing component/product (e.g., pre-filled cartridges) from each lot or batch of finished ENDS products. The reserve samples shall be retained for the expected shelf-life of the product.

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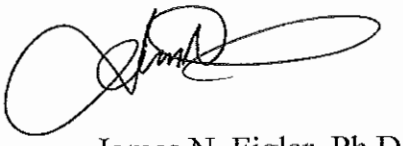
The Companies look forward to working with the Agency to establish appropriate TPMP regulations for all regulated tobacco products. As discussed above and in the

attached meeting request, we believe a meeting between the Companies and FDA would be helpful and would be pleased to meet at the Agency's earliest convenience. If you have any further questions or require additional information, please do not hesitate to contact me.

Respectfully submitted,



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