July 22, 2026

Via email at tiffany.hall@mastercard.com

Tiffany M. Hall
General Counsel
Mastercard Inc.
200 Purchase Street
Purchase, NY 10577

Dear Ms. Hall:

We are a coalition of national trade groups representing regulated retailers and wholesalers and are writing to inquire about recent actions by Mastercard issuing substantial fines to retailers who are selling vape/e-cigarettes/Electronic Nicotine Delivery Systems ("ENDS") products that are not included on the list of 45 ENDS products authorized for sale by the U.S. Food and Drug Administration (FDA).[1]

We understand that these recent actions were likely in response to letters sent from various State Attorneys General in April 2026 to credit card companies to request immediate assistance in stopping sales of illicit e-cigarette products facilitated through payment card networks. While we also support efforts to stop the sale of illicit vape/ENDS products, your actions and fines do not account for recent enforcement guidance issued by the FDA in May 2026, described below.

While premarket authorization for ENDS is required under the Federal Food, Drug, and Cosmetic Act (FFDCA) the FDA ***does not*** strictly enforce such a requirement, and instead opts to exercise its enforcement discretion as to certain products. Accordingly, it is not correct that all "unapproved ENDS items" are currently subject to enforcement action by FDA.

On May 8, 2026, FDA issued a new guidance document entitled "Enforcement Priorities for Certain New Tobacco Products Marketed Without Premarket Authorization."[2] In the guidance, FDA remarks that it "lacks the resources to pursue enforcement against every product that has not received authorization." Therefore, it provides:

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[1] https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/e-cigarettes-vapes-and-other-electronic-nicotine-delivery-systems-ends-authorized-fda

[2] While FDA has indicated that it intends to create and maintain a public-facing webpage identifying manufacturers and their associated products that FDA generally does not intend to prioritize enforcement against, it has not yet published this list. Nonetheless, the policy is still currently applicable to such products.

> For ENDS products marketed without FDA authorization [i.e., "unapproved"], FDA generally does not intend to prioritize enforcement of the premarket authorization requirement, where the product:
>
> - is subject to an application that is pending, and the application has been accepted and filed[3] or is subject to a supplemental application (sPMTA) that has been accepted and pending for more than 180 days; and
>
> - for non-tobacco-flavored ENDS products, if FDA has determined that the application also includes data necessary to evaluate whether such product is appropriate for the protection of the public health.

While this policy would not apply to products with certain presumptively underage-appealing elements (e.g., cartoon characters, resembling a children's toy) or products that present a significant public health or safety concern greater than those generally presented by other tobacco products, it currently applies to most ENDS products sold by responsible retailers, such as our collective members. Thus, FDA is not prioritizing enforcement against "unapproved" ENDS products if they are covered by a pending premarket tobacco product application (PMTA) that FDA has "filed" (and, for flavored ENDS products, the PMTA includes sufficient data to evaluate whether the product is appropriate for the protection of the public health).

Based on the above, the coalition requests that Mastercard revise its policy on ENDS sales to clarify that ENDS products marketed pursuant to the May 8, 2026, guidance and in compliance with other applicable state and local restrictions may be sold at retail pending a final FDA determination on the PMTA at issue. The coalition further requests that this clarification be reflected in all future communications regarding this issue.

Should you have any questions or require additional information, please do not hesitate to reach out to us to discuss further information. We look forward to your response.

Sincerely,

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[3] FDA must "file" a PMTA where the application contains sufficient information to permit a substantive review. 21 C.F.R. § 1114.27(b)(1).