DEEMED PRODUCT REVIEW: A CONVERSATION WITH THE OFFICE OF SCIENCE

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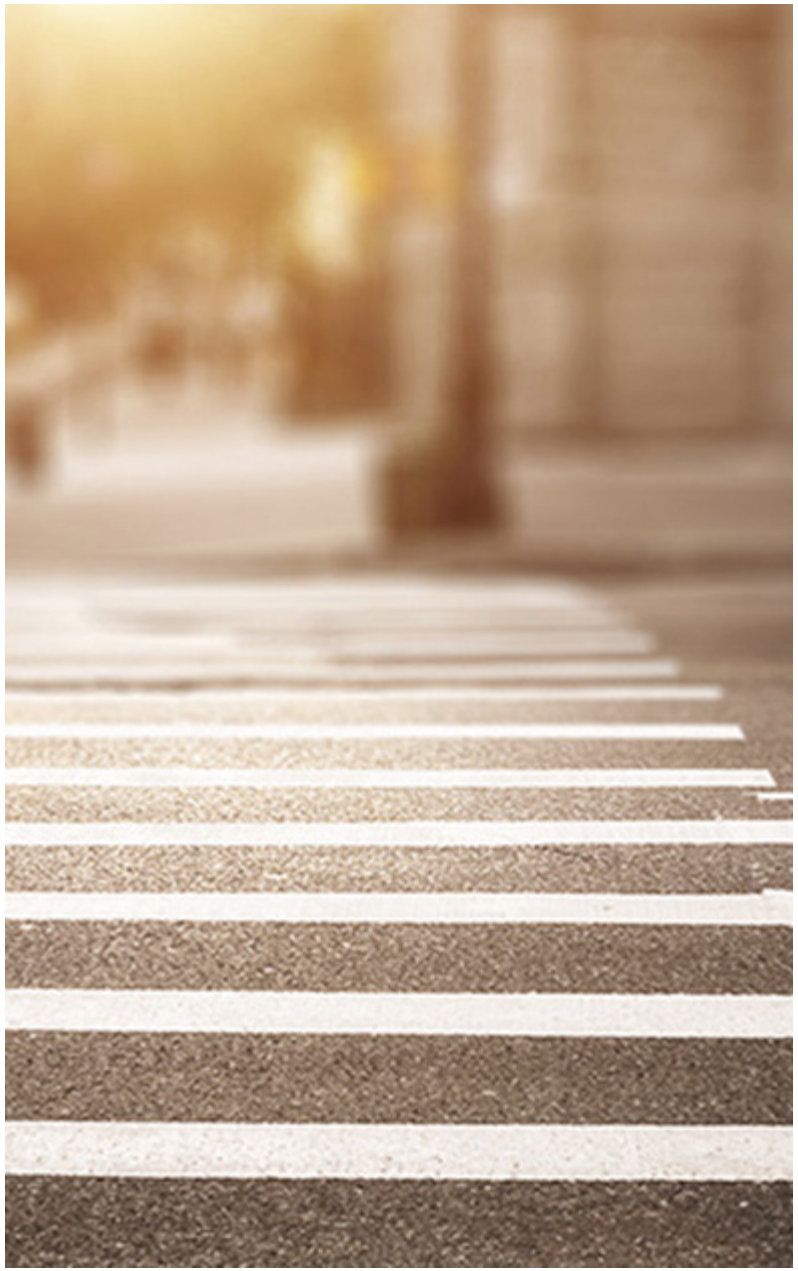
June 11, 2021

CENTER FOR TOBACCO PRODUCTS

AGENDA

- Background
- Planning & Preparation for Sept. 9, 2020
- Application Intake & Allocating Review Resources
- Progress on Reviewing Applications
- Deemed New Tobacco Product Applications List
- Q&A

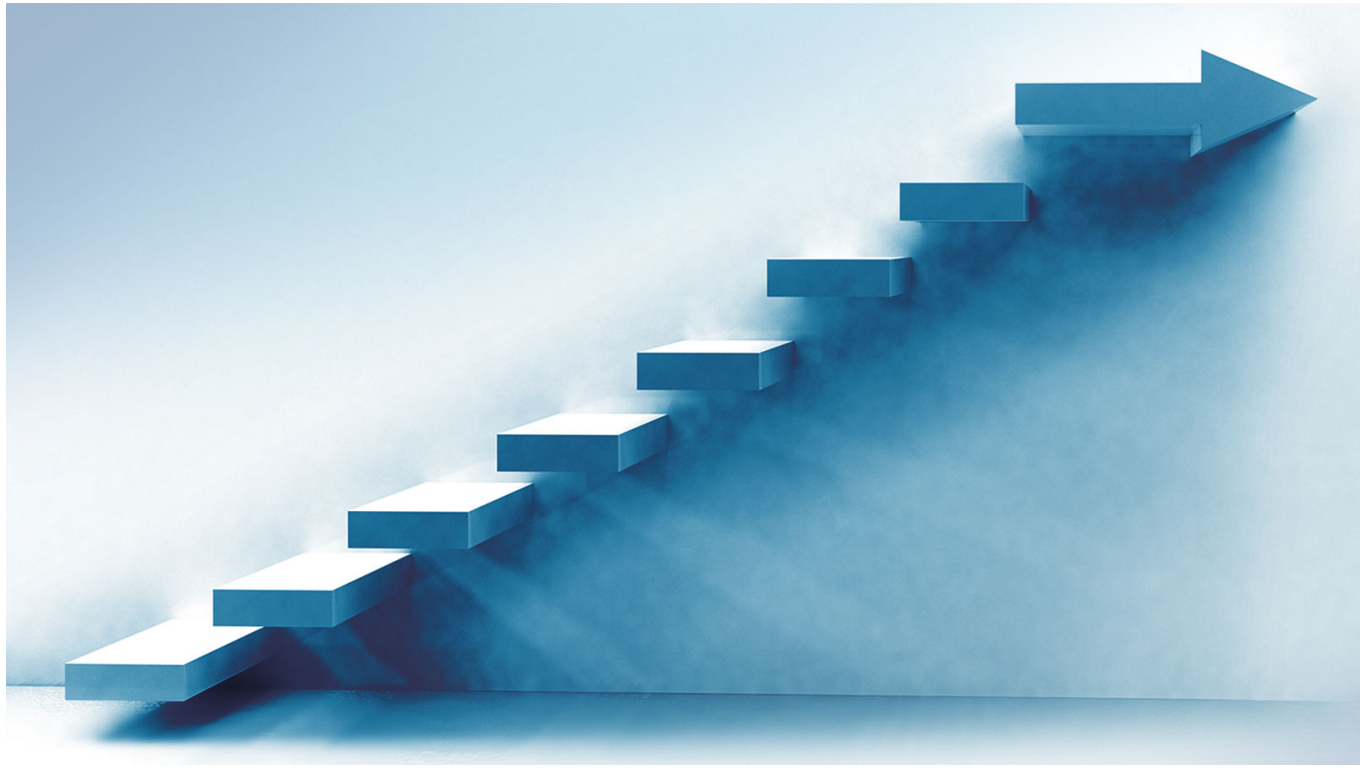


A CONVERSATION WITH THE OFFICE OF SCIENCE

- Following the Sept. 9, 2020 deadline, our job is to **process, review, & take action** on a massive number of applications for new tobacco products

- This meeting will focus on
  - Preparations for review
  - Progress made on review

- Our aim is **increased understanding & clarity** of the review process



REVIEWING NEW TOBACCO PRODUCTS

- The FD&C Act requires that, before a new tobacco product may be marketed in the United States, the product must undergo premarket review by FDA & receive marketing authorization

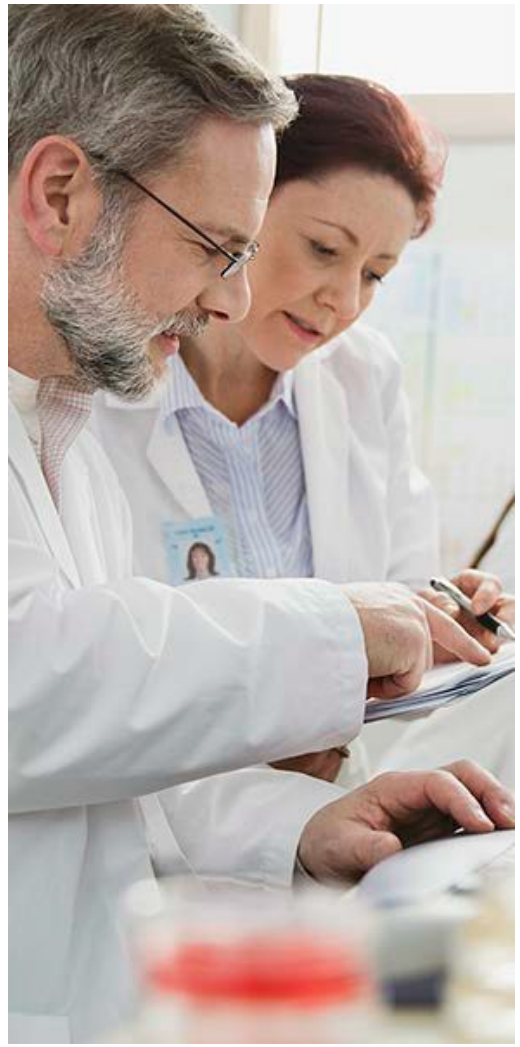
- Premarket review of new tobacco products is a critical part of how we carry out our mission to protect the public – especially youth – from the harms associated with tobacco use

PREMARKET APPLICATIONS DEADLINE

- Applications for premarket review for certain deemed new tobacco products on the market as of Aug. 8, 2016 were required to be submitted to FDA **by Sept. 9, 2020**

- For companies that submitted timely applications, FDA generally continues to defer **enforcement of premarket authorization requirements until Sept. 9, 2021**—unless a negative action (i.e., RTA, RTF, marketing denial) is taken by the FDA on an application during that time

- We are taking steps to **transform the marketplace** toward one where deemed new tobacco products available for sale will have undergone careful, science-based review & oversight by the FDA



OFFICE OF SCIENCE PLANNING & PREPARATIONS

EXPANDING OUR TEAM TO PREPARE FOR REVIEW

- **Over 500 scientists and program staff**

- **Broad expertise**
  - Epidemiology
  - Chemistry
  - Behavioral Pharmacology
  - Clinical Pharmacology
  - Toxicology
  - Social Science
  - Engineering
  - Microbiology
  - Statistics
  - Medical
  - Environmental
  - Regulatory

- **Extensive knowledge & experience**
  - Hire diverse staff with strong scientific background

PREPARATIONS FOR SEPT. 9: CTP COMMUNICATION AND OUTREACH

- **Pre-submission meetings** with potential future applicants to provide feedback on their planned applications
- **Informational meetings** with manufacturers to hear about their products
- **Scientific seminars** to discuss the details & constituents of tobacco products (such as ENDS and e-liquids)
- **Research** to fill knowledge gaps about tobacco products
- **June 2019 final guidance** on submission of PMTAs for ENDS
- **October 2019 public meeting** to outline product review policies, procedures, helpful tips, & general scientific principles that specifically apply to the manufacturers submitting applications – including PMTA – by September 9, 2020

PREPARATIONS FOR SEPT. 9: CTP COMMUNICATION AND OUTREACH (CONTINUED)

- **Site visits** to farms & primary and secondary manufacturing sites to better understand quality assurance processes
- **Expanded communications** effort, including a dedicated webpage as well as email & social media promotion, to share key information about submitting applications
- **Education on submitting applications electronically** through the CTP Portal or Electronic Submissions Gateway which are available any day and/or time
  - Encouraged applicants to use our electronic submissions systems, as they substantially cut down on processing time
  - Provided example spreadsheet to make it easier for applicants to group applications in single submission

RESOURCES FOR SUBMITTING PREMARKET APPLICATIONS

- **Reviewer Guides and Scientific Policy Memos**
  - Provide information about FDA review processes & several regulatory science issues
  - Developed to assist FDA reviewers with the evaluation of new tobacco product applications

- **Tobacco Product Master Files (TPMF)**
  - Voluntarily submitted information that may be used in support of any premarket application
  - Valuable resource that provides information that can apply to many applications
  - Reduces application size & allows for more efficient effort in reviewing the contents

GROUPED SUBMISSIONS

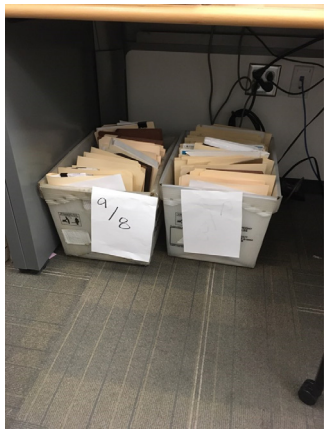
- Grouped submissions simplified the application process
- A **new cloud-based Product Data Service** was developed to house submission product data. This data is used to:
  - Generate lists of submissions & products received from industry
  - Help us efficiently determine & report on products under review
- Population of the database was facilitated by submission of the **FDA example spreadsheet** that assists applicants in organizing & providing information for each individual product in a grouped submission & accompanied the PMTA proposed rule

See, "Overview of Electronic Submissions Preparation and Tools"

APPLICATION INTAKE AND ALLOCATING REVIEW RESOURCES

APPLICATION INTAKE

- Large volume of submissions
- Large volume of applications
  - FDA goes through each submission to determine contents
  - For example, determine if a submission is a PMTA or SE Report & which individual tobacco products are included
- Each & every submission package was carefully assessed
  - Some applicants provided information on one product per submission while other applicants provided information for all of the company's products within one submission
  - Submissions in many different formats: electronic submissions, paper submissions, & mixed media



ALLOCATING REVIEW RESOURCES: THE GOALS

- Allocating our resources with the goal of working as quickly as possible to **transition the current marketplace for deemed products** to one in which all products available for sale have undergone a careful, science-based review

- Focusing resources on products where scientific review will have the **greatest public health impact** – based on their market share – while also committing to providing an **opportunity for review to all companies regardless of size**

ALLOCATING REVIEW RESOURCES: THE PROCESS

- **SE Reports & EX REQs**: review order was determined using **randomization** first by manufacturer & then by product type (if a manufacturer submitted applications for multiple products)

- **PMTAs**: review order for *most* of the products is determined using the same **randomization** process used for the SE Reports & EX REQs
  - Due to the large number of ENDS products applications, FDA **dedicated a portion of its resources to reviewing the products that account for most of the current market**
    - Continued marketing of these products has the **potential to have the greatest public health impact**—either positively or negatively—as they hold the largest overall market share & are therefore likely used by the largest number of people

ALLOCATING REVIEW RESOURCES, TRIAGE

- FDA **developed a triage process** to effectively manage and review applications. This was applied to all applications received by Sept. 9, 2020
  - Includes statutory products & deemed products that are not currently marketed

- In advance of Sept. 9, FDA applied the triage process to **applications received April-Aug 2020**

- After Sept. 9, FDA applied triage process to all **applications received by Sept. 9** deadline
  - Provided all those who submitted by the deadline with a fair opportunity to be selected for review

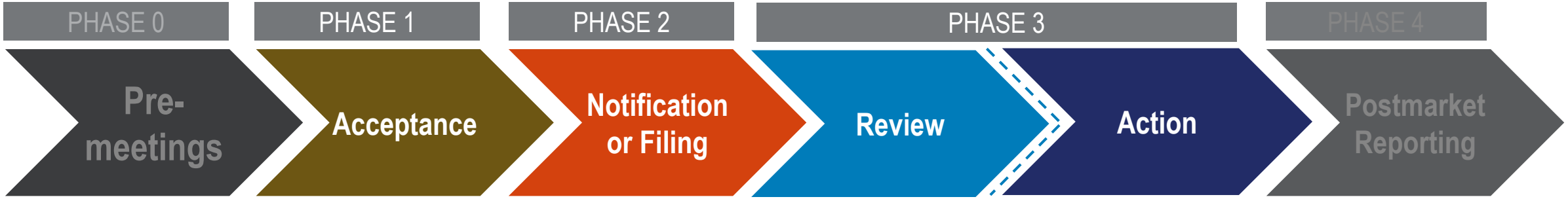
REVIEW PROGRESS OF SEPT. 9 APPLICATIONS

FDA'S PROGRESS ON PROCESSING

	Substantial Equivalence	Exemption Request	Premarket Tobacco Product Application
	100% Processing Complete	100% Processing Complete	100% Processing Complete
CTP PORTAL	FDA received applications **for 6,800 products**	FDA received applications **for 350 products**	FDA has processed applications **for 6.5 million products**
	from **100 companies**	from **15 companies**	from **over 500 companies**

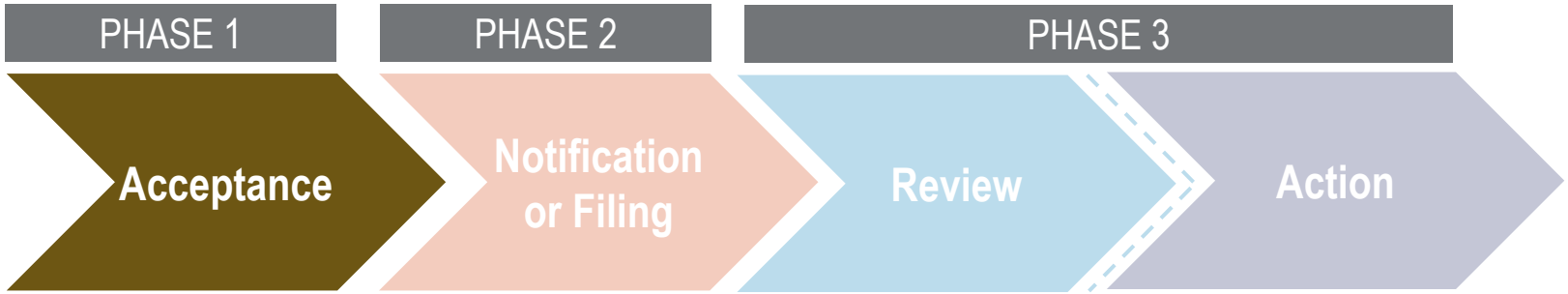
All numbers are estimates.

FDA'S REVIEW PROCESS



- Acceptance review ensures the product falls under CTP's jurisdiction & confirms that basic requirements of an application are met.
- FDA may Refuse to Accept (RTA) a premarket application if it contains certain deficiencies

REFUSE TO ACCEPT (RTA)



If a currently marketed product receives an RTA, that product must be removed from the market or risk FDA enforcement action. Examples of deficiencies that lead to an RTA include:

For PMTA, EX REQ, SE:

- Lack of product identification (e.g., package type, package quantity)
- Application files are in a format that FDA cannot process, read, review, or archive
- Lack of an Environmental Assessment (EA)

For SE Only:

- Lack of health summary or statement

For EX REQ Only:

- Not submitted electronically

See: Final Rule - Refuse To Accept Procedures for Premarket Tobacco Product Submissions

PRODUCT IDENTIFICATION

- In accordance with (21 CFR § 1105.10(a)(7)), FDA will refuse to accept an application for review if **full identification of the new tobacco product** is not provided; this includes the following criteria:
  - Name of the manufacturer of the new product
  - Product Name
  - Product Category
  - Product Sub-Category
  - Package Type
  - Package Quantity
  - Characterizing Flavor

- If the new tobacco product does not have a listed product property (e.g., characterizing flavor for a coil), state "none" for that property

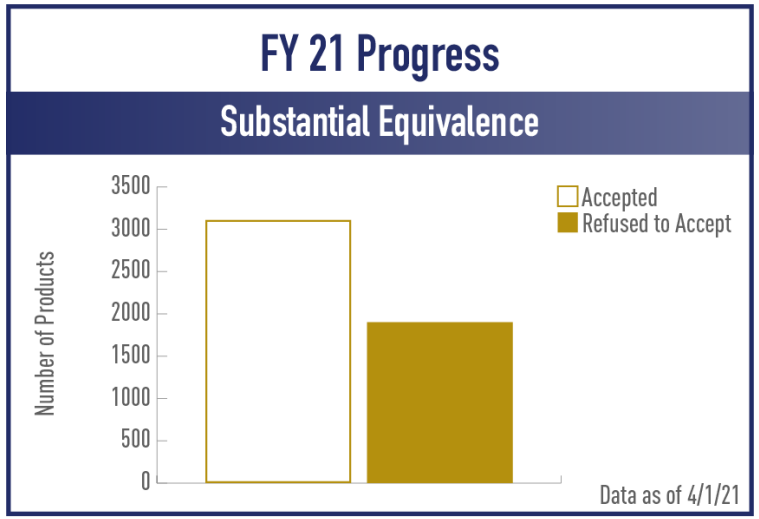
PRODUCT IDENTIFICATION: HEATED TOBACCO PRODUCTS

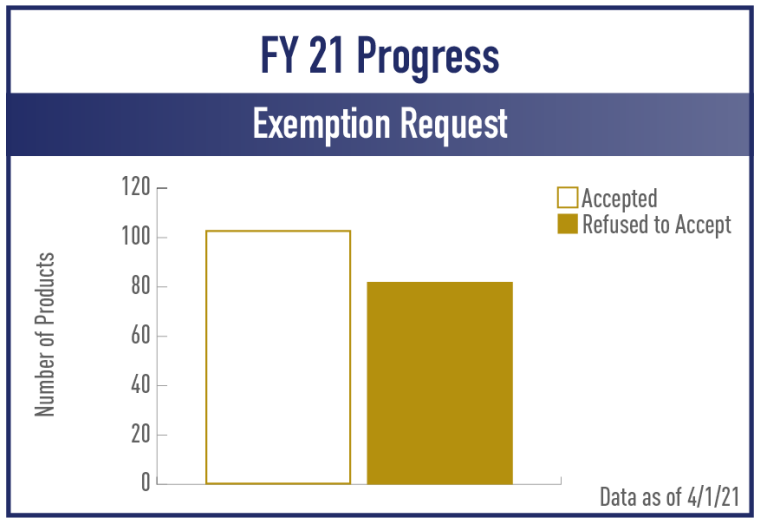
- HTPs are capable of using multiple consumables (tobacco filler and/or E-Liquid and/or gels) and are referred to as **multimodals**
- Key for categorization is whether the product can contain solid tobacco or not
- **HTPs are capable of using solid tobacco, differentiating them from Vapes (ENDS), which are not capable of using solid tobacco**

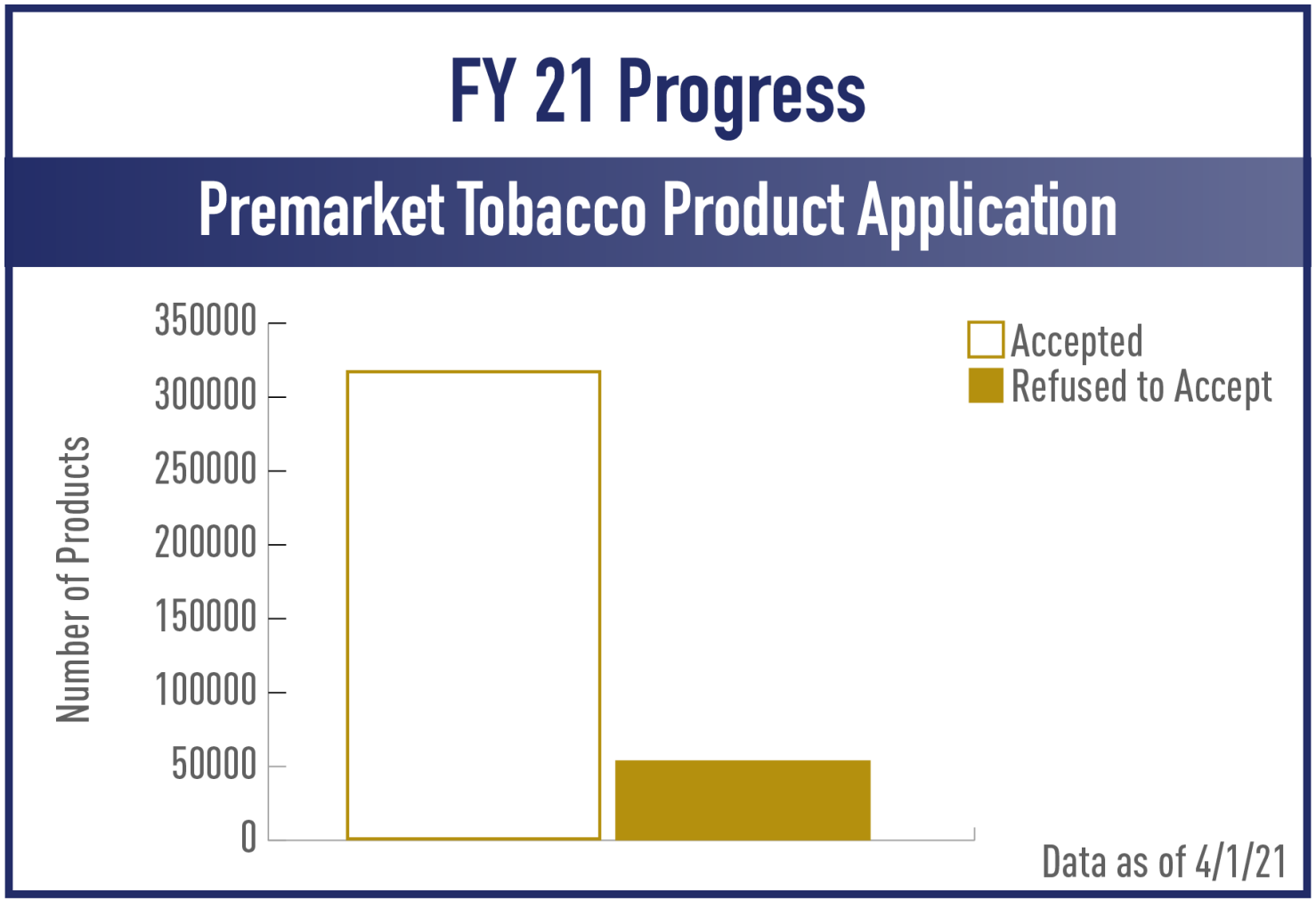
This table provides an example of full ID for a closed HTP, in addition to the name of the manufacturer of the new tobacco product

New Tobacco Product	
Product Name	Product A
Product Category	HTP
Product Sub-Category	Closed HTP
Package Type	Box
Package Quantity	1 device
Characterizing Flavor	Tobacco
Length	100 mm
Diameter	6 mm
Wattage	200 W
Battery Capacity	100 mAh
Additional Properties	None

FDA'S PROGRESS ON ACCEPTANCE REVIEW

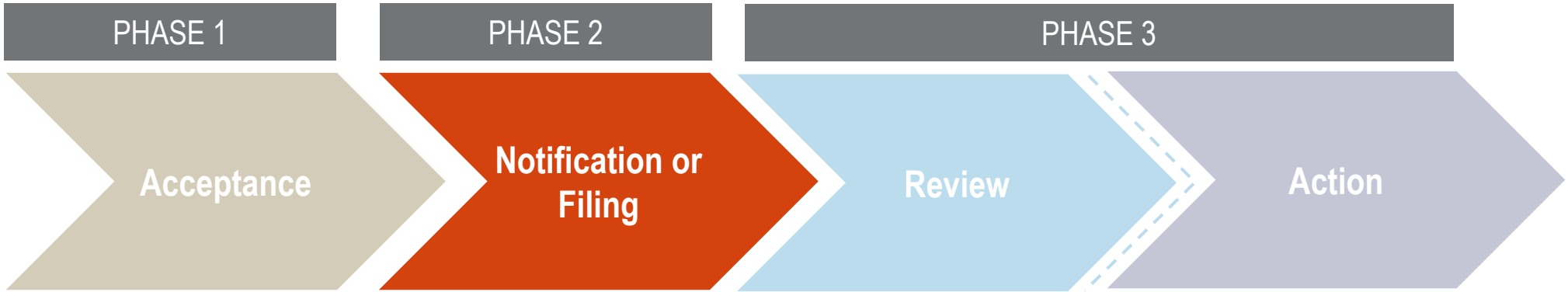






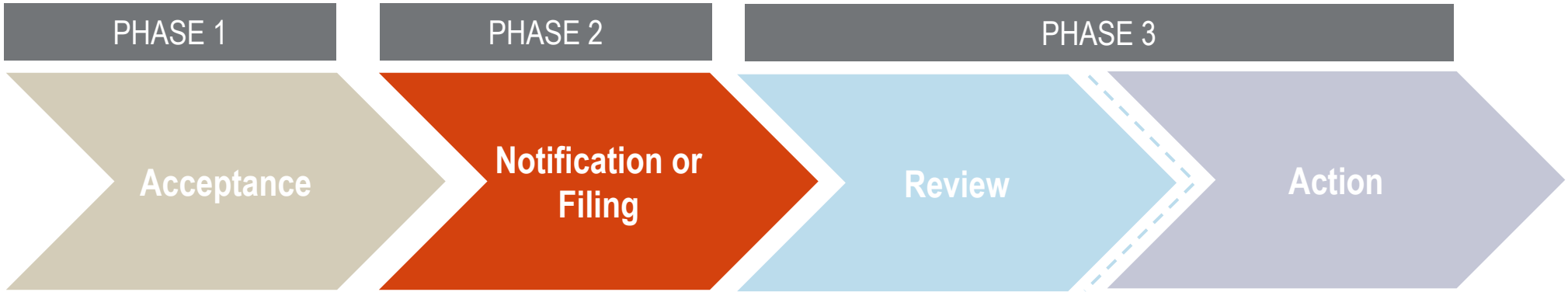
See: Tobacco Product Applications: Metrics & Reporting

FILING REVIEW FOR ACCEPTED PMTAS



- Filing review ensures applications contain all the items required under section 910(b)(1), including, but not limited to:
  - Full reports of all information concerning investigations which have been made to show the health risks of the tobacco product and whether the tobacco product presents less risk than others
  - Full statements of the components, ingredients, additives, and properties, and of the principle or principles of operation
  - Full descriptions of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, the tobacco product

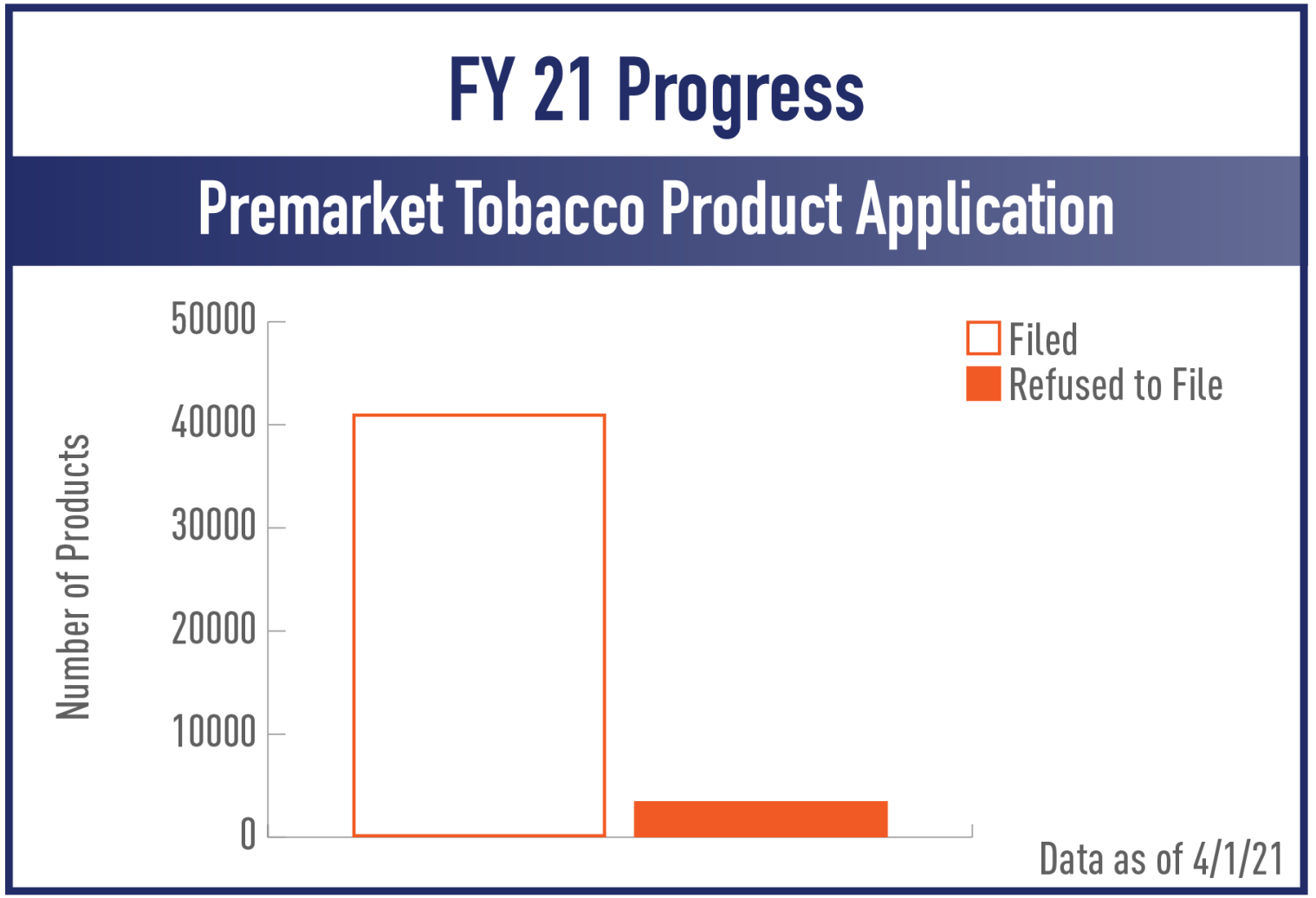
REFUSE TO FILE (RTF)



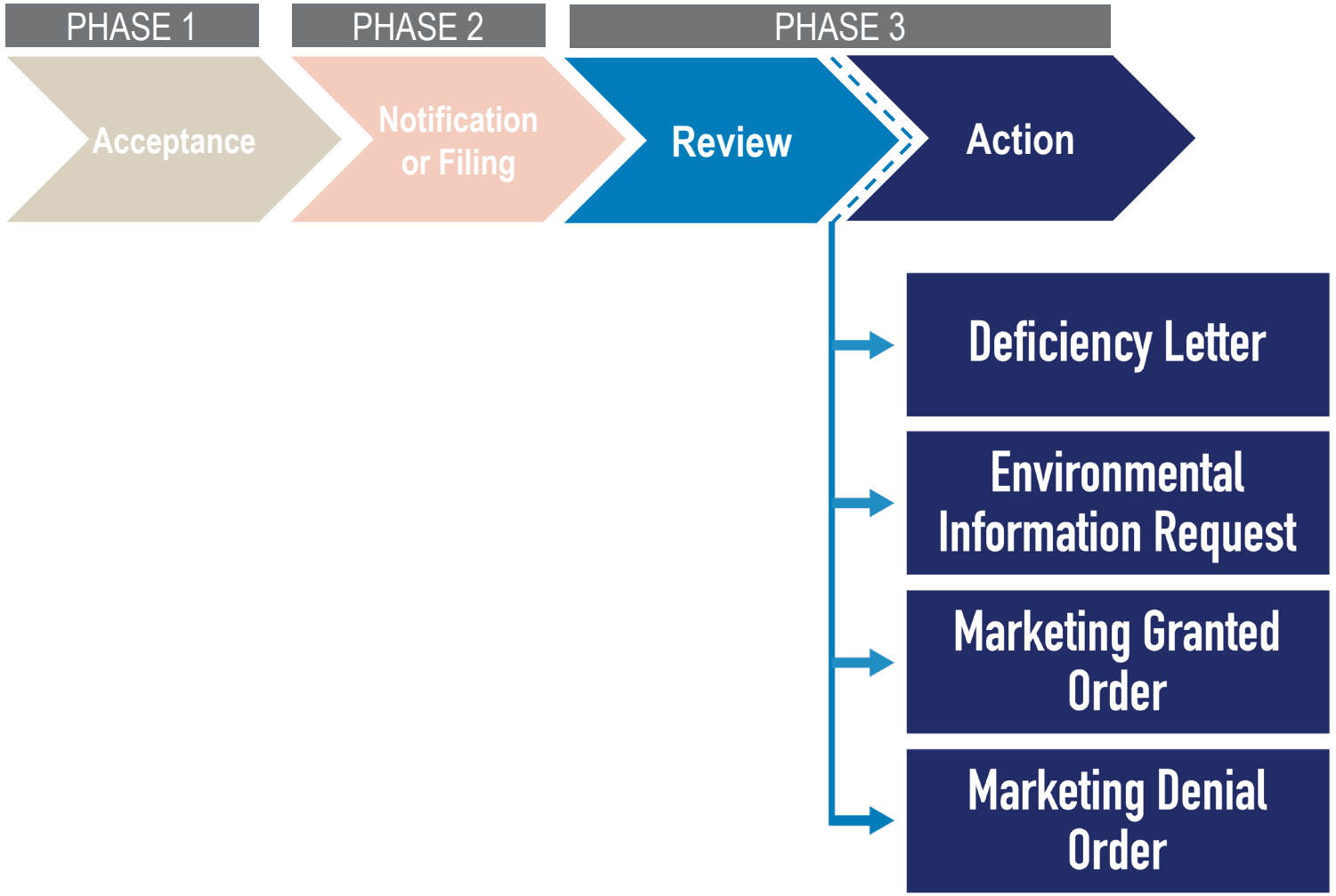
Examples of deficiencies that lead to an RTF include:

- Lack of full statement of components, ingredients, additives, and properties, and principles of operation for such tobacco product
- Lack of labels
- Lack of a description of the manufacturing process and lack of the physical addresses of the manufacturing facility where processing step occurs
- Lack of adequate environmental assessment (ex: missing proposed action, impact of use and disposal)

FDA'S PROGRESS ON PMTA FILING REVIEW



PMTA SUBSTANTIVE REVIEW AND ACTION



DEFICIENCY LETTERS: PMTA

To clarify the intent and scope of PMTA deficiency letters, they will now include the following text:

"This letter is not intended to convey an FDA conclusion that the information provided in your PMTA raises or does not raise concerns about the potential public health impact of marketing these products. This Deficiency letter is highlighting additional information that FDA needs at this time in order to continue its scientific review. It should not be understood to communicate a list of substantive concerns and providing this information does not guarantee that you will receive a positive marketing order. A final decision regarding marketing of the product(s) will be made at the end of our scientific review based on the totality of all the information included in your original submission as well as your response to this letter."

FY21 SUBSTANTIVE REVIEW PROGRESS

- We are working expeditiously and have already completed substantive review for some SE Reports and EX REQs submitted by Sept. 9, 2020.

- As of April 1, 2021, FDA has issued:

For SE:

- 48 Substantial Equivalence (SE) Orders
- 2 Not Substantially Equivalent (NSE) Orders

For EX REQ:

- 231 Found Exempt Orders
- 10 Not Exempt Orders

For PMTA:

- Commenced scientific review on thousands of PMTA products
- >5,000 discipline reviews completed

- FDA will notify a firm when their applications move into scientific review
- Also issuing deficiency letters, which give applicants opportunity to provide additional information about their products

LIST OF DEEMED NEW PRODUCTS WITH TIMELY APPLICATIONS

POSTING LISTS OF PRODUCTS

- FDA has **completed processing** and **verification of marketing information** for products received through all three pathways: **PMTA, SE & EX REQ**
- The **lists of the deemed new tobacco products** include products that were on the market in the U.S. as of Aug. 8, 2016, are still on the market now, and for which a premarket submission was made by Sept. 9, 2020
  - FDA contacted applicants to verify the lists of products for which an application was submitted, and to request the current marketing status of the products, and/or the date the products entered the market
- FDA is making information available to the public to be transparent & increase stakeholder knowledge of these products, particularly among retailers
- The lists are not comprehensive, so retailers should discuss the current status of any particular tobacco product's application and/or marketing status with their suppliers

PRODUCTS NOT INCLUDED IN THE LIST

- This is **NOT** a comprehensive list of currently marketed deemed products
  - The list is based on information received from companies and does not include entries for companies that did not respond to FDA before the time of posting
  - The list may not contain the names of deemed tobacco products that were commercially marketed in the United States as of February 15, 2007 and for which manufacturers do not need to submit premarket applications (unless the products were since modified)
  - Per a court ruling issued August 19, 2020, FDA is currently not enforcing the premarket review requirement against manufacturers of "premium cigars," as defined in that court's ruling
  - If a tobacco product is sold under multiple brand names, it may only be represented under one brand name on this list

THANK YOU

Questions?