

## E-Vapor Industry Coalition Formally Opposes CPSC Novel Interpretation of CNPPA that Immediately Requires Flow-Restricted Packaging for E-Liquids

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As [previously reported](#) on this blog, earlier this year, the U.S. Consumer Product Safety Commission (CPSC) announced that it was now reading the Child Nicotine Poisoning Prevention Act (CNPPA) to require nicotine e-liquid bottles to meet the “restricted flow requirement” in 16 C.F.R. § 1700.15(d), in addition to having child-resistant closures. A wave of enforcement actions soon followed. CPSC issued Notices of Violations to numerous e-liquid companies alleging that e-liquid bottles (specifically glass bottles) without flow restrictors rendered the e-liquid a “misbranded hazardous substance” pursuant to section 2(p) of the Federal Hazardous Substances Act (FHSA). CPSC ordered these companies to initiate a number of “corrective actions,” including to immediately stop sale and distribution, notify all known retailers and consumers, and destroy and dispose of returned units and any remaining inventory. Such actions may drive companies, including many small businesses that make up the backbone of the vapor industry, out of the market.

In response to CPSC’s demands for immediate action, a coalition of national and state vapor trade associations (the “E-Vapor Coalition”) came together to express their strong opposition to CPSC’s new reading of the CNPPA. In [a letter](#) to the CPSC Acting Chair and Commissioners, the E-Vapor Coalition lays out in detail the flaws in the CPSC’s new reading of the statute, which neither the plain language nor the legislative history support. Moreover, this recent interpretation is inconsistent with *three years* of previous guidance from the Commission. The E-Vapor Coalition letter also raises concerns about flaws in CPSC’s hastily drafted testing protocol for flow restrictors, which appear to be suitable only for testing plastic packaging. The letter also highlights the potential conflict with the Food and Drug Administration (FDA) rules prohibiting changes to e-liquid packaging without FDA premarket approval.

As the E-Vapor Coalition letter points out, while industry disagrees that the CNPPA requires flow restrictors as part of its special packaging requirements, or that packages without flow restrictors are “misbranded hazardous substances,” coalition members share CPSC’s desire to safeguard children from potential hazards of accidental ingestion of nicotine-containing e-liquids. While instances of accidental ingestion are fortunately extraordinarily rare, the E-Vapor Coalition does not object to an orderly transition to restricted flow packaging, in coordination with FDA. It is vital that this be done in a manner that will not unduly burden manufacturers, distributors and retailers, or deprive adult consumers of less risky alternatives to combustible tobacco by forcing existing producers who switch to flow-restricted packaging to seek pre-market authorization from FDA. Associations comprising the E-Vapor Coalition and their respective members look forward to working with both CPSC and FDA to achieve these goals.

To keep track of CPSC’s latest guidelines for liquid nicotine containers, see its *Liquid Nicotine Packaging Business Guidance* [website](#).

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