

THE
NATIONAL LAW REVIEW

CPSC May Get New Authority Over Liquid Nicotine Containers for E-Cigarettes

Thursday, January 28, 2016

For all of you who know the U.S. Consumer Product Safety Commission (CPSC), you know that the agency distinctly *does not* have authority over tobacco or tobacco products. This arguably wasn't always the case. Early on, the American Public Health Association petitioned the CPSC to regulate cigarettes containing more than 21 mg of tar. When the Commission voted not to take action, a district court ordered it to under the Federal Hazardous Substances Act (FHSA), but Congress amended the law before the CPSC could take action. See Consumer Product Safety Commission Improvements Act, [Pub. L. 94-284](#), 90 Stat. 503 (May 11, 1976); see also *Food & Drug Administration v. Brown & Williamson Corp.*, 529 U.S. 120, 150-151 (2000) (discussing the petition, litigation, and statutory amendment). Tobacco and tobacco products have been explicitly excluded from CPSC jurisdiction since that 1976 law.

Much has changed since then. Tobacco products have recently evolved beyond traditional cigarettes and other tobacco-leaf-containing products to include "electronic" devices that aerosolize nicotine. Under the 2009 Family Smoking Prevention and Tobacco Control Act (FSPTCA), [Pub. L. 111-31](#), 123 Stat. 1,776 (June 22, 2009), the Food and Drug Administration (FDA) gained authority to regulate tobacco products, which are now defined to include any products that contain nicotine *derived* from tobacco. Nicotine-containing electronic cigarettes and the "e-liquids" used in them will come under FDA's tobacco authority as soon as FDA finalizes its "Deeming Regulation."

The limitation on CPSC's jurisdiction on products in the "nicotine family" also appears set to be loosened - albeit only slightly - as Congress just passed the Child Nicotine Poisoning Prevention Act ([S. 142](#)), which is currently awaiting the President's signature. The law would impose packaging restrictions on certain liquid nicotine products similar to those already required under the Poison Prevention Packaging Act (PPPA), [Pub. L. 91-601](#), 84 Stat. 1,670 (Dec. 30, 1970).

© 2019 Keller and Heckman LLP

Source URL: <https://www.natlawreview.com/article/cpsc-may-get-new-authority-over-liquid-nicotine-containers-e-cigarettes>



Article By [Azim Chowdhury](#)
[Sheila A. Millar](#)
[Keller and Heckman LLP](#)
[Consumer Protection Connection](#)

[Consumer Protection](#)
[Biotech, Food, Drug](#)
[All Federal](#)