



February 2016

Regulation of E-Liquids

On Jan. 28, 2016, the President signed S. 142, the Child Nicotine Poisoning Protection Act (the Act), into law. After passing the U.S. Senate in December and the U.S. House earlier this month by voice vote, the President's signature starts the clock on a 180-day effective date.

The bipartisan measure, which is the first step to regulating e-cigarettes, requires liquid nicotine containers sold in the U.S. to be packaged in compliance with the Consumer Product Safety Commission's existing child-resistant standards, namely the Poison Prevention Packaging Act of 1970.

The Act defines a "liquid nicotine container" as follows:

(2) LIQUID NICOTINE CONTAINER.—

(A) IN GENERAL.—Notwithstanding section 2(f)(2) of the Federal Hazardous Substances Act ([15 U.S.C. 1261\(f\)\(2\)](#)) and section 3(a)(5) of the Consumer Product Safety Act ([15 U.S.C. 2052\(a\)\(5\)](#)), the term "liquid nicotine container" means a package (as defined in section 2 of the Poison Prevention Packaging Act of 1970 ([15 U.S.C. 1471](#)))—

(i) from which nicotine in a solution or other form is accessible through normal and foreseeable use by a consumer; and

(ii) that is used to hold soluble nicotine in any concentration.

(B) EXCLUSION.—The term "liquid nicotine container" does not include a sealed, pre-filled, and disposable

container of nicotine in a solution or other form in which such container is inserted directly into an electronic cigarette, electronic nicotine delivery system, or other similar product, if the nicotine in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

This definition applies to “open-system” electronic vaping systems (*i.e.*, modular electronic cigarette devices) but does not apply to “closed-system” electronic vaping systems such as commercially available e-cigarettes.

This action comes amidst the Office of Management & Budget’s review of a broader federal rule to “deem” certain other tobacco products, such as e-cigarettes, to be tobacco products and therefore subject to federal Food and Drug Administration regulation. The Child Nicotine Poisoning Protection Act has a savings clause for the Secretary of Health and Human Services to take any further action necessary to implement the law. This includes authority for a final rulemaking under the “Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Regulations on the Sale and Distribution of Tobacco Products and the Required Warning Statements for Tobacco Products” and “Nicotine Exposure Warnings and Child-Resistant Packaging for Liquid Nicotine, Nicotine-Containing E-Liquids(s), and Other Tobacco Products” rules.

If the Secretary decides to adopt, maintain, enforce, impose, or continue in effect any packaging requirement for such liquid nicotine containers, the bill directs the Secretary to consult with the Consumer Product Safety Commission.

The Act was sponsored in the Senate by U.S. Senator Bill Nelson (D-FL) and in the House by Rep. Susan Brooks (R-IN) and Rep. Elizabeth Etsy (D-CT).

For more information on the Child Nicotine Poisoning Prevention Act, please see the full text of the bill [here](#).

Other applicable federal law and resources:

- > Poison Prevention Packaging Act standards can be found at 16 CFR 1700.15;
- > Poison Prevention Packaging Act testing procedures can be found at 16 CFR 1700.20;
- > [Consumer Product Safety Commission Guide to Child Resistant and Senior-Friendly Packages](#);
- > [Consumer Product Safety Commission Child-Resistant Package Testing Firms](#).

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