United States Senate

WASHINGTON, DC 20510

October 2, 2019

The Honorable Ann Marie Buerkle, Acting Chairman
The Honorable Robert Adler, Commissioner
The Honorable Elliot Kaye, Commissioner
The Honorable Dana Baiocco, Commissioner
The Honorable Peter Feldman, Commissioner

U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, Maryland 20814

Dear Acting Chairman Buerkle and Commissioners Adler, Kaye, Baiocco, and Feldman:

We write to you to express our concern regarding the continued presence of liquid nicotine containers whose noncompliance with statutory child resistant packaging requirements jeopardize the health and safety of children across the country. Containers that do not comply with the U.S. Consumer Product Safety Commission's (CPSC) child-resistant packaging and flow restriction requirements as outlined in the *Child Nicotine Poisoning Prevention Act* (CNPPA) present a deadly and immediate threat to children and toddlers that are left at risk of nicotine poisoning. We call on the CPSC to prioritize the prevention of child nicotine poisoning by fully enforcing the CNPPA and immediately removing all noncompliant liquid nicotine containers from the market.

The CPSC's targeted authority to address dangerous consumer packaging directly translates to the agency's role in protecting children from liquid nicotine poisoning that may result from noncompliant containers. Nicotine poisoning can occur when e-liquid is swallowed or even simply comes in contact with skin, resulting in symptoms such as difficulty breathing, vomiting, and seizures.[1] Additionally, according to the American Academy of Pediatrics—depending on the concentration of nicotine—a single bottle of liquid nicotine is toxic enough to kill four toddlers.[2] As of September, nearly 3,000 exposure incidents related to e-cigarettes and liquid nicotine have been reported to poison control centers in 2019 alone.[3]

In 2015, Congress passed the CNPPA that provided the CPSC the authority to ensure that liquid nicotine containers comply with the *Poison Packaging Prevention Act* to protect children from nicotine poisoning.[4] We were pleased to see that CPSC clarified industry guidance to

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[1]American Academy of Pediatrics, "E- Cigarettes," https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/Richmond-Center/Pages/Electronic-Nicotine-Delivery-Systems.aspx
[2]American Academy of Pediatrics, "State Advocacy FOCUS, Liquid Nicotine Poisoning," https://www.aap.org/en-us/advocacy-and-policy/state-advocacy/Documents/Liquid%20Nicotine.pdf
[3]National Poison Data System, American Association of Poison Control Centers, "Electronic Cigarette and Liquid Nicotine Cases," https://aapcc.org/track/ecigarettes-liquid-nicotine.
[4]Child Nicotine Poisoning Prevention Act of 2015, U.S. Code 15 (2016), § 1471.

specify that child resistant packaging also requires flow restriction. Specifically, an inverted or squeezed bottle should not dispense more than 2 millimeters of a liquid at a time. [5] This includes glass and rigid containers alike. [6] Congress specifically included this requirement in the CNPPA given the potency of liquid nicotine, which makes this additional protection crucial to poisoning prevention.

According to a statement by Commissioner Feldman earlier this year, continued noncompliance with this requirement resulting from CPSC's initial failure to communicate this standard to industry could mean that "as much as 100% of liquid nicotine containers do not comply fully with the requirements of the *Child Nicotine Poisoning Prevention Act*, including the use of flow restrictors."[7] This statement is extremely troubling and highlights the severity of this issue that has so far left countless children and toddlers in harm's way.

As Chairman and Ranking Member of the Senate Commerce Subcommittee on Manufacturing, Trade, and Consumer Protection, we urge the CPSC to take immediate action to enforce the CNPPA by urgently removing all noncompliant liquid nicotine containers that pose a threat to children from the market. In addition, we would like to formally request an update on all compliance and enforcement actions the agency has taken so far under the CNPPA. Finally, we also hereby request that CPSC provide an estimation of the resources necessary to fully and effectively implement this important law. I look forward to hearing the steps you will take to achieve this by October 16, 2019.

Sincerely,

Jerry Moran

JERRY MORAN
Chairman, U.S. Senate Commerce
Subcommittee on Manufacturing, Trade,
and Consumer Protection
United States Senate

Richard Blumenthal

RICHARD BLUMENTHAL
Ranking Member, U.S. Senate Commerce
Subcommittee on Manufacturing, Trade,
and Consumer Protection
United States Senate

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[5] U.S. Consumer Product Safety Commission, *Nicotine Packaging Test Parameters,* by Robert S. Kaye, March 8, 2019, https://www.cpsc.gov/s3fs-public/NoticeofRestrictedFlowTP.March82019.pdf.

[6] U.S. Consumer Product Safety Commission, *Supplemental Information on Liquid Nicotine Packaging For Rigid Containers*, by Robert S. Kaye, August 15, 2019, https://www.cpsc.gov/s3fs-public/SupplementalInformationOnLiquidNicotinePackagingForRigidContainers08152019.pdf?WEfgDkWunbdD6.HAgHJhtrT4Iixqe59V.

[7] Peter Feldman, (@FeldmanCPSC), Twitter post, February 2019, 1:12pm, https://twitter.com/FeldmanCPSC/status/1098284255342444545?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1098284255342444545&ref_url=https%3A%2F%2Fvaping360.com%2Fvape-news%2F79053%2Fan-obscure-federal-safety-rule-could-cripple-the-vaping-industry%2F.