

SMOKESHOP

THE INDUSTRY AUTHORITY ON TOBACCO RETAILING

Official Publication of the International Premium Cigar & Pipe Retailers Association (IPCPR)

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THE IMPORTANCE OF VAPING PRODUCTS IN YOUR MERCHANDISE MIX



✓ **It's Everything**
VapeXcape, Calgary, Alberta



✓ **It Plays a Role**
Smoke & Gift Shop, Las Vegas



✓ **It's a Non-Issue**
Educated Cigar, Richland, Wash.

As vaping consumers and vaping merchandise evolves, retailers approach this segment strategically. Where do you stand?

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to adhere to the requirements of the MSA would end all electronic cigarette brand name sponsorships, outdoor and public transit advertising, branded merchandise, free product samples (except in adult-only establishments), and targeting of youth in advertising.

Waxman, Welch, and Harkin explain that in their view, e-cigarettes meet “all the criteria for the definition of cigarette (and tobacco product) in the Master Settlement Agreement.” They further express their belief that “the MSA contemplated that novel products—like e-cigarettes—would later meet the definition of cigarette,” and that “inclusion of these products in the definition of cigarette is consistent with the MSA’s overarching goal of protecting America’s youth from the harms of tobacco use.”

The MSA defines “tobacco products” as “cigarettes and smokeless tobacco products.” In turn, “cigarettes” are defined as follows:

Any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition.

The Congressmen explain that e-cigarettes meet this definition as they “contain nicotine;” are “heated under ordinary conditions of use;” and “contain...tobacco, in any form” because “their key ingredient is nicotine, which is produced from tobacco leaves.” Finally, they note that e-cigarettes are “likely to be offered to, or purchased by,

Hey Legislators: Vaping Products Don’t Belong in the MSA!

Congressmen push for e-cigarettes to be captured by the Master Settlement Agreement (MSA) in a longshot bid. Their arguments are flawed, but if they were to succeed, regulatory changes would dramatically change the segment. > BY BRYAN M. HAYNES

Three Congressmen—Representatives Henry Waxman of California, Peter Welch of Vermont, and Senator Tom Harkin of Iowa—earlier in 2014 each sent letters to the Attorneys General of their respective states, California Attorney General Kamala D. Harris, Iowa Attorney General Tom Miller, and Vermont Attorney General William H. Sorrell, urging them to include e-cigarettes within the coverage of the Master Settlement Agreement (MSA), by expanding the definition of “cigarette” to include e-cigarettes.

Notably, California’s Kamala Harris, Iowa’s Tom Miller, and Vermont’s William Sorrell were among the 41 Attorneys General who sent a letter to the FDA in September 2013 urging the agency to regulate e-cigarettes. They demanded that the FDA move quickly to

expand restrictions under the Tobacco Control Act governing the marketing of tobacco products to minors so that they apply to e-cigarettes as well.

In their letter, the legislators explain that regulating e-cigarettes under the MSA “would have an immediate and much needed impact because it would stop the electronic cigarette—or e-cigarette—makers from marketing their products in ways that are appealing to kids.” They further state that this “would not remove them from the market or make them unavailable to adults who may see them as a safer alternative to conventional cigarettes. But it would bar the manufacturers from targeting youth, using cartoons and youth-oriented sponsorships to promote their products, and advertising on outdoor billboards.” Practically, forcing e-cigarette companies

consumers as a cigarette.” Specifically, “the whole e-cigarette experience is designed to resemble cigarette use through sales of e-cigarettes in packs (like traditional cigarettes), the vapor inhalation process replicating a traditional smoking experience, and the glow of the e-cigarette tip mimicking what happens when users take a drag of a combustible cigarette.”

the agency imposes commonsense restrictions on the marketing practices of e-cigarette makers.”

The primary flaw with the legislators’ position is that the premise behind the MSA was the states’ claim for money due to expenditures related to illnesses caused by smoking, and that the tobacco manufacturers were liable because they had defrauded

>The primary flaw with the legislators’ position is that the premise behind the MSA was the states’ claim for money due to expenditures related to illnesses caused by smoking and that the tobacco manufacturers were liable because they had defrauded consumers by failing to disclose the health risks of smoking.

The legislators also argue that including e-cigarettes within the MSA is necessary because “the rising use of e-cigarettes by children” is due to a lack of “effective regulation.” They explain that they “have urged FDA to curb the youth targeting of e-cigarette makers by deeming e-cigarettes to be tobacco products under the Family Smoking Prevention and Tobacco Control Act. But this has been a slow process.”

However, soon after the legislators’ letter, the FDA proposed regulations that would extend the agency’s tobacco authority to cover additional tobacco products including e-cigarettes. The lawmakers explained that even once a regulation is released “additional rulemakings could be required before

consumers by failing to disclose the health risks of smoking. Importantly, the e-cigarette companies could not have participated in such conduct because they were not in existence at the time the MSA was authored and signed. Nor, obviously, could companies be covered by an agreement to which they did not consent.

While it is unlikely that the state Attorneys General can or will take action to expand the coverage of the MSA to include e-cigarettes, it is not an impossibility. What is certain, however, is that the federal government and the states will continue to examine novel approaches aimed at enhancing regulatory oversight of the expanding e-cigarette market. **S**

The MSA: What is it?

The 1998 Master Settlement Agreement resolved the unprecedented litigation in which the states sought to recoup cigarette-related Medicaid costs. The litigation was settled through a combination of negotiated regulatory requirements and financial payments of about \$250 billion over 25 years.

Settlement payments received by states are strongly related to smoking-related medical costs but are also related to political factors. The payments largely took the form of an excise tax equivalent, raising potential antitrust concerns. The regulatory restrictions imposed by the agreement also raised antitrust concerns. However, there has been no evident shift in industry concentration. The increase in advertising and marketing expenses has largely taken the form of price discounts. The settlement sidestepped the usual procedures pertaining to the imposition of taxes and the promulgation of new regulations.

Credit: Abstract of the National Bureau of Economic Research working paper “Tobacco Regulation through Litigation: The Master Settlement Agreement,” by W. Kip Viscusi and Joni Hersch, © 2009.

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