

ULSTER COUNTY BOARD OF HEALTH

October 7, 2019

AGENDA

CALL TO ORDER

- **OLD BUSINESS**

- a. Approval of May and June 2019 minutes

- **NEW BUSINESS**

- a. Board of Health Membership (Dr. Woodley)
- b. Commissioner's Report (Dr. Smith)

- Medical Examiner Stats
- Ragweed Complaint
- Karolys Update
- Narcan Trainings
- Integrated Ulster Update
- Rav Tov Polystyrene Request for Waiver
- New Lead Poisoning Regulations
- Ban on Flavored e-cigarettes
- FAQ for School Vaccinations
- 2019-2020 Flu Vaccine Campaign

MEETING CONCLUSION

Ulster County Board of Health
October 7, 2019

Members PRESENT: Kathleen Rogan, Board Member
Walter Woodley, MD, Chairperson
Peter Graham, ESQ., Vice President
Gina Carena, Secretary
Stephanie Turco, LCSW, Board Member

DOH/DMH PRESENT: Carol Smith, MD, MPH, Commissioner of Health

GUESTS: None

ABSENT: Marc Tack, DO, Board Member

EXCUSED: Nereida Veytia, Deputy/Patient Services Director
Shelley Mertens, Director of Environmental Health Services

- I. **Approval of Minutes:** A motion was made by Mr. Graham to approve the May 8, 2019 and the June 10, 2019 minutes, the motion was second by Dr. Carena and the minutes were unanimously approved.
- II. **Board Members:** Dr. Woodley discussed the issue of poor attendance at the monthly Board meetings. He asked the Board if the meeting time and frequency was an issue for attendance. Dr. Woodley reinforced that Board membership should not be taken lightly and quorums are needed. Dr. Carena asked if a Board meeting was cancelled that Board members receive a phone call and not just an email. It was agreed that this change would be made. Mr. Graham suggested trying a different day such as the third Monday of the month when the second Monday is a holiday instead of holding the meeting on the first Monday. This change will also be implemented. Ms. Rogan stated that the Board meetings are helpful to her as the meetings serve as a conduit for getting important information out to other community groups she participates in.

As of December 2019 there will be two Board vacancies. Mr. Graham recommended that Board members make recommendations for replacements. Recommendations can be emailed to Dr. Smith's secretary and Dr. Smith will give the names to the County Executive for consideration.

III. Agency Reports:

Commissioner's Report: Dr. Carol Smith reported on the following:

1. **Medical Examiner Stats:** The Medical Examiner stats were distributed to the Board for review. (see attached)
2. **Ragweed Complaint:** Dr. Smith reported on a call received from Senator Metzger's office regarding a complaint call they received about an overabundance of ragweed growing in the New Paltz area. Based on Public Health Law it is the responsibility of the Board of Health to address remediation. Dr. Smith was in communication with the Department of Public Works Commissioner who worked with a DOH Environmental Manager to do a site inspection to determine the areas. The owners of the properties were sent a letter from Dr.

Smith and the Board of Health (see attached) asking for remediation. Much of the identified properties were owned by the Town and Village who was willing to remediate the issue on their properties. The Environmental Health Manager spoke to the Town gardener who stated that the ragweed season is almost over. DOH did due diligence to address the issue.

1. **Polystyrene:** The Department received another letter from Camp Rav Tov's attorney requesting a polystyrene waiver (see attached). The request was forwarded to the County Attorney's office.
2. **Karolys Update:** An Order to cease and desist was issued to Karolys company to stop allowing truckloads of construction material to come from out-of-county to dump their waste. There is a court date scheduled for the end of the month. The UC Legislature is considering reworking the local law regarding waste haulers and the types of materials allowable to be dumped.
3. **Narcan Training:** Dr. Smith will conduct Narcan training at the Ulster County open enrollment session on October 15th for any employee interested. The trainings focus on how to dispense Narcan and what signs to look for when administering.
4. **Integrated Ulster:** This initiative is being spearheaded by the Department of Mental Health. An orientation event occurred on October 4th in which there were 150 in attendance. The initiative focuses on "No Wrong Door" and warm handoffs, ultimately helping individuals get where they need to go for services.
5. **New Lead Poisoning Regulations:** Lowering the elevated blood lead level criteria from 10ug/dl to 5ug/dl. (see attached)
6. **Ban on Flavored e-cigarettes:** The Governor instituted an emergency ban on all flavored e-cigarettes which went into effect on September 17th which was overturned on October 1st by a Justice in the Appellate Division. (see attached)
7. **FAQ for School Vaccinations:** The NYS Department of Health issued a FAQ for schools and child-care facilities regarding the required vaccinations to attend school. (see attached)
8. **2019-2020 Flu Vaccination Campaign:** The flu season has begun. Copies of the campaign flyer was distributed to the Board. (see attached)

IV. **Adjournment:** A motion was made to adjourn the meeting by Mr. Graham seconded by Ms. Rogan and unanimously approved.

V. **Next Meeting:** The next meeting is scheduled for November 18, 2019, 6:30 PM

Respectfully submitted by:


Gina Carena, MD
Secretary

Department of Health or any other applicable law. Copies of all reports shall be filed with the Clerk of the County Legislature and the County Executive.

§ A5-2. Deputy Commissioner of Health or Deputy Public Health Director.

- A. The Commissioner of Health or the Public Health Director shall have the power to appoint one or more Deputy Commissioners of Health or Deputy Public Health Directors, within the limits of appropriations therefor. Every appointment shall be in writing and filed in the Office of the County Clerk and the Clerk of the Legislature.
- B. The term of office of any deputy appointed hereunder shall coincide with that of the Commissioner of Health or the Public Health Director, provided that such appointment may be revoked at any time by the Commissioner or the Director by written revocation filed with the County Clerk. All positions of Deputy Commissioner or Deputy Director may be in the exempt class of civil service; or in the alternative, the deputy may also be an additional title which may be designated by the Commissioner or the Director for a department staff member.
- C. Deputy Commissioners or Deputy Directors shall perform such duties pertaining to the office of the Department of Health as the Commissioner or the Director may direct and shall act generally for and in such place of the Commissioner or Director and perform such other and further duties as the Commissioner or Director may assign.
- D. The designation of an order of succession for the position of Deputy Commissioner or Deputy Director shall be filed with the County Clerk and the Clerk of the County Legislature and may be revoked at any time by the Commissioner or Director filing a new written designation of order of succession.
- E. Should the Deputy so designated by the Commissioner of Health or Public Health Director not be a licensed physician, and should the Commissioner of Health or Public Health Director resign, die or certify in writing and filed with the County Clerk a statement that he or she is unable to perform and/or exercise the powers and duties of the office, or should he or she be removed from office, then the County Executive, in consultation with the Board of Health and with confirmation by the County Legislature, shall appoint a qualified replacement as soon as practicable.

§ A5-3. Board of Health.⁴¹

- A. *Appointment.* There shall be a Board of Health consisting of seven members who shall be appointed by the County Executive for a term of five years, subject to confirmation by the Legislature, except that of the members first appointed to the Board of Health following adoption of the Charter, two members shall hold office for the term of one year, two members for the term of two years, one member for the term of three years, one member for the term of four years, and one member for the term of five years from and after their appointment. Two members shall be physicians. One member shall be a licensed health care professional who is not a physician. One member shall be selected from among

41. Editor's Note: See Charter § C-42.

three nominees submitted to the County Executive by the Mayor of the City of Kingston. If a vacancy shall occur other than by expiration of a term, it shall be filled by appointment for the unexpired term in the same manner as specified in this subsection. The members of the County Health Board shall select the Chairman of that Board for a term of one year. No member of the Board of Health shall serve for more than two consecutive terms. Members of the Board of Health shall receive no compensation for services rendered but shall be entitled to their reasonable and necessary expenses incurred in the performance of their duties, within appropriations made for such purposes. Members of the Board of Health shall be residents of the County of Ulster.

- B. *Powers and duties.* The Board of Health shall exercise all the powers and perform duties of local boards of health as provided for under state law, including the Public Health Law of the State of New York, except as otherwise provided in the Charter. *The Board of Health shall advise the Commissioner of Health or Public Health Director, the County Executive and the Legislature in matters relating to the Department of Health. The members of the Board of Health shall further have the power to inspect and review all facilities and programs of the Department of Health, with or without notice to the Commissioner of Health or Public Health Director, and as it regards as necessary and desirable may report and make recommendations to the County Executive, the County Legislature and Commissioner of Health or Public Health Director. All such reports shall be public records, posted on the website of the County government and made available for inspection at the offices of the Commissioner of Health or Public Health Director and the County Executive at all reasonable times. The Board of Health shall also advise and consult with respect to all capital projects necessary for the Department of Health. The Board of Health shall have and exercise such other and related duties required by the Legislature or the County Executive.*
- C. The Board of Health shall keep minutes of all meetings, including the date and time of meeting and Board members in attendance. The original of said minutes shall be filed with the Clerk of the Legislature as soon as possible, but not to exceed 10 business days after the next regular Board meeting at which the minutes were reviewed and accepted. The Clerk of the Legislature or his or her designee shall maintain an official record of the Board's agenda items. This official record shall include the disposition of each agenda item, including individual votes of each Board member on each item.
- D. *Sanitary Code.* Any Sanitary Code now in force or hereafter adopted by the Board of Health and any amendment to such Sanitary Code shall be published and filed in the manner and places required by the Public Health Law and any other applicable law. Before adopting any amendment to the Sanitary Code, the Board of Health shall cause notice of a public hearing thereon to be published in the official news papers once a week for two publications, and at least 20 days shall elapse from the first publication to the date of the hearing. The notice shall contain an abstract statement of the proposed amendment and give the time and place of such hearing. On or before the date of the first publication of the proposed amendment, copies thereof shall be filed with the Clerk of the Legislature, the County Executive, the Clerk of each city, town and village in Ulster County and in the office of the Commissioner of Health or Public Health Director and be open to inspection by the public. Such County Sanitary Code and any amendments thereto shall also be filed in the Ulster County Clerk's office.

Ulster County Department of Health

Medical Examiner's Office - Autopsy Cases

Date of Death between 1/1/2019 and 9/30/2019

Total Number of Cases: 89

<i>Cases by Gender</i>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Grand Total
F	2	1	1	2	2	0	6	2	2	0	0	0	18
M	16	7	12	3	6	9	4	9	5	0	0	0	71
Grand Total	18	8	13	5	8	9	10	11	7	0	0	0	89

<i>Cases by Manner</i>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Grand Total
Accidental	6	4	7	3	4	1	3	2	2	0	0	0	32
Homicide	0	0	0	0	0	0	0	1	0	0	0	0	1
Natural	6	3	2	1	4	4	3	3	1	0	0	0	27
Pending	0	0	0	0	0	0	1	3	3	0	0	0	7
Suicide	6	1	3	0	0	4	1	2	1	0	0	0	18
Undetermined	0	0	1	1	0	0	2	0	0	0	0	0	4
Grand Total	18	8	13	5	8	9	10	11	7	0	0	0	89

<i>Cases by Category</i>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Grand Total
Alcohol	2	0	1	0	0	1	0	0	0	0	0	0	4
Cardiovascular	2	2	1	0	3	1	0	2	1	0	0	0	12
Cardiovascular and Diabetes	1	0	0	0	0	1	2	1	0	0	0	0	5
Cardiovascular and Obesity	0	0	0	1	0	0	1	0	0	0	0	0	2
Drowning	1	1	0	0	0	0	1	0	0	0	0	0	3
Fall	1	1	2	0	0	1	1	0	1	0	0	0	7
Fall - Intentional	0	0	1	0	0	0	0	0	0	0	0	0	1
Gunshot Wound	4	1	2	1	1	3	0	0	0	0	0	0	12
Hanging	2	0	0	0	0	1	1	1	1	0	0	0	6
Infant	0	0	1	0	0	0	0	0	0	0	0	0	1
Motor Vehicle Accident	1	0	1	0	1	0	1	1	0	0	0	0	5
Opioid	3	0	1	1	0	0	0	0	1	0	0	0	6
Opioid w/ Other Substances	0	1	2	2	2	0	1	1	0	0	0	0	9
Opioid w/ Other Substances and Alcohol	0	1	0	0	0	0	0	0	0	0	0	0	1
Other	0	0	0	0	0	0	1	1	1	0	0	0	3
Pending	0	0	0	0	0	0	1	2	2	0	0	0	5
Pending - Suspected Opioid	0	0	0	0	0	0	0	1	0	0	0	0	1
Pneumonia	0	0	0	0	0	1	0	0	0	0	0	0	1
Pulmonary Disease	1	1	0	0	1	0	0	0	0	0	0	0	3
Smoke Inhalation	0	0	1	0	0	0	0	0	0	0	0	0	1
Stab Wound	0	0	0	0	0	0	0	1	0	0	0	0	1
Grand Total	18	8	13	5	8	9	10	11	7	0	0	0	89

Dear

The Ulster County Department of Health and the Board of Health has received a complaint by a resident of New Paltz that there is an overgrowth of ragweed on your property. A Sanitarian from the Ulster County Department of Health has viewed your property and determined that the complaint is valid. According to the authority vested in the Board of Health by New York State Public Health Law, the Board is hereby declaring that the condition of your property presents a health nuisance and is ordering that the noxious weed condition be abated immediately.

The Board of Health will ask the Department of Health to reinspect your property in seven business Days to ensure that the noxious weed condition has been abated. The expectation is that you will properly maintain your property on an annual basis.

We appreciate your cooperation in helping to protect the health of the people of New Paltz. You may contact Mr. James Rodden at the Ulster County Department of Health by calling 845-340-3010, should you have any questions.

Sincerely,

Walter Woodley, M.D.
Chairperson
Ulster County Board of Health

Carol M. Smith, M.D., M.P.H.
Commissioner
Ulster County Department of Health

Bruce Perlmutter

- ATTORNEY AT LAW -

51 BROADWAY
POST OFFICE BOX 425
WOODRIDGE, NY 12789

845-436-4109
FAX: 845-436-9398
EMAIL: bperlmutter@pronetisp.net

September 26, 2019

BY FAX: 845-334-8337

Ulster County Department of Health
239 Golden Hill Lane
Kingston, NY 12401-6441

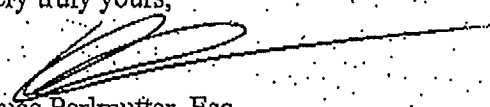
Attn: Kristin A. Gunmaer, Esq., Assistant County Attorney

**Re: Daryland Rav Tov; Ulster Heights Rav Tov;
Kerhonkson Rav Tov and Napanoch Rav Tav**

Dear Ms. Gunmaer:

I have discussed the enclosed letter dated May 24, 2019 with my client. Based on same, he will be obtaining separate Employer Identification Numbers for each camp listed above. We are, therefore, requesting you to reconsider your denial of the Financial Hardship Waiver.

Very truly yours,


Bruce Perlmutter, Esq.

BP/lar

enc.

cc: Camp Rav Tov



ULSTER COUNTY DEPARTMENT OF HEALTH

239 Golden Hill Lane, Kingston, NY 12401-6441, (845) 340-3150, Fax (845) 334-8337

ADELE B. REITER
Acting County Executive

CAROL M. SMITH, MD, MPH
Commissioner of Health and Mental Health

May 24, 2019

Bruce Perlmutter
Attorney at Law
51 Broadway
PO Box 425
Woodridge, NY 12789

Subject: Request for Polystyrene Financial Hardship Waiver

Dear Mr. Perlmutter:

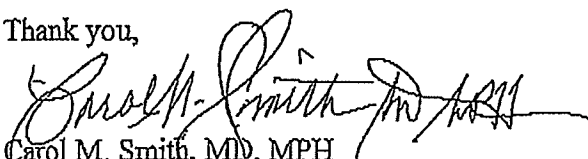
The Ulster County Health Department is in receipt of your letter dated May 17, 2019, in which, you ask this office to note the attached letter from the Certified Public Accountant. Said letter states only that the profit of each of the four locations operated by Camp Machne Rav Tov did not exceed \$300,000. As stated in my previous response, the Ulster County Local Law 4 of 2015 only allows exemptions for food establishments when the gross income is less than \$300,000 annually.

Last year you provided a financial statement that showed the gross income of Camp Machne Rav Tov to be over \$5,000,000. Your request for a financial exemption was denied. This year you've asked the County to consider each camp location to be its own food establishment under the Local Law. However, the Employer Identification Number for tax purposes is the same for each location, confirming that they are all a single entity, overseen by Machne Rav Tov.

In response to your statement that there is no feasible alternative for this use that would cost the same or less than the polystyrene disposable food service ware, your statement, without proof, does not demonstrate the accuracy of this claim.

Therefore, the request for an exemption to the Ulster County Law banning the use of polystyrene is again denied.

Thank you,


Carol M. Smith, MD, MPH
Commissioner of Health and Mental Health

cc: David Rosenberg, Machne Rav Tov
Kristin Gumaer, Asst. County Attorney
UCDOH File

YGMS60@GMAIL.COM



MEMORANDUM

To: City/County Commissioners/Public Health Directors
City/County Directors of Environmental Health
District Directors

James Hurst – New York City Department of Consumer Affairs

From: Brian M. Miner, Director *BMM*
Bureau of Community Environmental Health and Food Protection

Date: October 3, 2019

Subject: Temporary Restraining Order on Enforcement of the Flavor Ban

On October 1, 2019, a Justice in the Appellate Division, Third Department, granted an order temporarily restraining the Department from enforcing the flavored vaping device emergency regulation. While the Department continues to vigorously defend against this lawsuit, enforcement by local health departments and the Department's district offices cannot begin on Friday, October 4, 2019 as planned. The Department maintains that alarming statistics regarding youth usage of flavored e-cigarettes and their undeniable pathway to nicotine addictions speak for themselves. The Department feels strongly that this public health crisis requires urgent action and we look forward to our next opportunity to impress this upon the courts. The Department will immediately inform you once enforcement is able to begin for this important regulation.

cc: G. Ginsberg
M. Cambridge
R. Sokol/D. Lang
C. Jones Rafferty
T. Shay
S. Martin
A. Bonamici
C. Westerman
R. Swider
J. Strepelis
Regional Field Coordinators
LHD2

Katrina Kouhout

From: Rebecca Miller <rmiller@caphill.com>
Sent: Tuesday, September 17, 2019 7:08 PM
To: Sarah Ravenhall
Subject: Fwd: New York approves emergency ban on most flavored e-cigarettes

Becky Miller

Begin forwarded message:

From: "POLITICO States" <states-alert@politico.com>
Date: September 17, 2019 at 6:23:05 PM EDT
To: <rmiller@caphill.com>
Subject: New York approves emergency ban on most flavored e-cigarettes
Reply-To: "POLITICO subscriptions" <reply-fe971c727160017c75-553241_HTML-639939320-1376319-12737@politicoemail.com>

New York approves emergency ban on most flavored e-cigarettes

By Shannon Young, Amanda Eisenberg

09/17/2019 06:22 PM EDT

State health officials on Tuesday approved emergency regulations that ban the sale of most flavored e-cigarettes in New York amid a spike in youth vaping and a growing number of lung illnesses tied to illicit devices.

The Public Health and Health Planning Council adopted Department of Health rules that make it illegal for anyone or entity to possess, manufacture, distribute, sell or offer for sale any flavored e-liquid or devices containing the product. Officials noted that retailers — not consumers — will be targeted for possession.

Retailers would face fines of up to \$2,000 per violation, according to the governor's office.

The emergency regulations, which take effect immediately and will last for 90 days unless extended, ban flavors including fruit, chocolate, mint, wintergreen and herb or spice, among others.

The PHHPC, however, exempted tobacco and menthol flavors from the ban — a move that drew criticism from its own members as well as anti-tobacco and public health advocates.

Health Commissioner Howard Zucker, who attended the PHHPC's emergency meeting in Albany, said the regulations seek to address two separate public health crises: the recent increase in young people using flavored e-cigarettes and the growing number of respiratory illness cases tied to illicit vaping products.

"We cannot wait for the legislative session to begin, which is in January," he said. "We cannot wait for federal action.

A recent survey found that nearly half of adolescent e-cigarette users in New York preferred fruit flavors, followed by percent who preferred mint/menthol, according to DOH. More than a quarter of respondents, meanwhile, said that

flavors were the reason they use e-cigarettes and 19 percent said that flavors were the primary reason they tried vaping.

Saying that the health department “will continue to implement the multiple aggressive actions New York State is taking to address the vaping epidemic,” Zucker said the health council could reconvene at a later date to consider a ban on menthol e-cigarette products — a flavor which he noted has historically been marketed to African Americans.

“We will entertain different possibilities as we move forward, but now we’re not going to make any changes at this point,” he said. “Regarding the menthol question, the governor has asked that we look at that and report back to him two-week period.”

Nearly 9 out of 10 black smokers prefer menthol cigarettes, according to the Centers for Disease Control and Prevention.

Harvey Lawrence, a PHHPC member at the New York City meeting, suggested the state ban menthol flavors for children but allow it for adults.

Representatives from the American Cancer Society Cancer Action Network, American Heart Association and other groups that sent a letter to Zucker ahead of the PHHPC meeting urging the council to include all flavored e-cigarettes in the regulations.

Julie Hart, a senior director of government relations for the American Cancer Society Cancer Action Network, said the U.S. Department of Health and Human Services has suggested that fruit and menthol or mint e-cigarette flavors are by far the most popular among high school students who vape, which underscores the need for banning menthol.

Meanwhile, members of The New York State Vapor Association, which represents more than 700 New York vapor product businesses and thousands of their employees, and other industry groups argued that the ban on flavored e-cigarettes would hurt small businesses and New Yorkers who use the products to quit smoking tobacco.

“This ban will force hundreds of thousands of ex-smokers to the newly created unregulated, black market for flavored nicotine which will explode overnight in New York — similar to the unregulated THC black market which has caused the emergent outbreak of illness in the first place,” said Andrew Osborne, vice president of NYSVA.

David Holmes, president of Unique eCigs Inc., further contended that young people are drawn to the high-nicotine content in e-cigarette products, not the flavors.

The NYSVA is considering challenging the state’s emergency regulations in court.

Gov. Andrew Cuomo announced on Sunday that his administration would pursue executive actions to outlaw flavored cigarette sales in New York. He directed Zucker to hold an emergency meeting with the health council to implement the ban.

Zucker noted that the emergency regulations, which provide a two-week grace period before enforcement begins, coincide as state health officials investigate 74 cases of severe pulmonary illness among patients aged 14 to 69 who used at least one cannabis-containing vape product prior to getting sick. Most of those cases, he said, involve individuals under age 21.

Laboratory tests found very high levels of vitamin E acetate in nearly all cannabis-containing samples analyzed by the state. The state has subpoenaed three companies that manufacture vape liquids found to have vitamin E acetate added as a thickener and expects to ask for samples from more companies to determine the cause of the illnesses.

State Sen. Brad Hoylman and Assemblywoman Linda Rosenthal, Manhattan Democrats who sponsored bills to ban flavored e-cigarette sales during the 2019 legislative session, also sent letters ahead of the council's meeting urging officials to include menthol in the administration's policy.

Rosenthal plans to push the legislation again, as well as another a bill that would ban sales and distribution of e-cigarettes until they receive FDA clearance, when lawmakers return to Albany in January. Legislation is needed to permanently ban flavored e-cigarettes in the state.

To view online:

<https://subscriber.politicopro.com/states/new-york/city-hall/story/2019/09/17/new-york-approves-emergency-ban-most-flavored-e-cigarettes-1193762>

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Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 225 of the Public Health Law, Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to add a new Subpart 9-3, to be effective upon filing with the Department of State.

A new Subpart 9-3, titled "Prohibition on the Sale of Electronic Liquids with Characterizing Flavors", is added to read as follows:

Section 9-3.1 Definitions.

As used in this Subpart, the following terms shall have the following meanings:

- (a) The terms "electronic cigarette," "e-cigarette", "electronic liquid," and "e-liquid" shall have the same meanings as established in Subpart 9-2.
- (b) The term "flavored e-liquid" means any e-liquid with a distinguishable taste or aroma, other than the taste or aroma of tobacco or menthol, imparted either prior to or during consumption of an e-cigarette or a component part thereof, including but not limited to tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, mint, wintergreen, herb or spice, or any "concept flavor" that imparts a taste or aroma that is distinguishable from tobacco flavor but may not relate to any particular known flavor. An e-liquid shall be presumed to be a flavored e-liquid if a tobacco retailer, manufacturer, or a manufacturer's agent or employee has made a statement or claim directed to consumers or the public, whether expressed or implied, that the product or device has a distinguishable taste or aroma other than the taste or aroma of tobacco or menthol.

(c)The term “possession” means having physical possession or otherwise exercising dominion or control over flavored e-liquids or a product containing the same. For purposes of this definition, among other circumstances not limited to these examples, the following individuals and/or entities shall be deemed to possess flavored e-liquids, or a product containing the same: (1) any individual or entity that has an ownership interest in a retail, distribution or manufacturing establishment that possesses, distributes, sells or offers for sale flavored e-liquids, or a product containing the same; and (2) any clerk, cashier or other employee or staff of a retail establishment, where the establishment possesses, distributes, sells or offers for sale a flavored e-liquids or a product containing the same, and who interacts with customers or other members of the public.

Section 9-3.2 Possession, Manufacture, Distribution, Sale or Offer of Sale of Flavored E-Liquid Prohibited.

It shall be unlawful for any individual or entity to possess, manufacture, distribute, sell or offer for sale any flavored e-liquid or product containing the same.

Section 9-3.3 Penalties.

A violation of any provision of this Subpart is subject to all civil and criminal penalties as provided for by law. For purposes of civil penalties, each individual container or other separate unit of flavored e-liquid, product containing the same, or any component part that imparts flavor to an e-cigarette, that is possessed, manufactured, distributed, sold, or offered for sale, shall constitute a separate violation under this Subpart.

Section 9-3.4 Severability.

If any provisions of this Subpart or the application thereof to any person or entity or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Subpart or the application thereof to other persons, entities, and circumstances.

Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council (PHHPC) is authorized by Section 225 of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC) subject to the approval of the Commissioner of Health. PHL Section 225(5)(a) provides that the SSC may deal with any matter affecting the security of life and health of the people of the State of New York.

Legislative Objectives:

PHL Section 225(4) authorizes PHHPC, in conjunction with the Commissioner of Health, to protect public health and safety by amending the SSC to address issues that jeopardize health and safety. This proposed regulation furthers this legislative objective by prohibiting the possession, manufacture, distribution, sale or offer for sale of flavored electronic liquids (e-liquids) to discourage youth electronic cigarette (e-cigarette) use.

Needs and Benefits:

Emergency regulations are necessary to address the alarming increase of e-cigarette use among New York's youth. New York State-specific surveillance data shows that youth e-cigarette use has risen at a dramatic rate over just the last four years, driven primarily by the abundance of e-liquid flavors. Swift interventions are needed to protect our youth from a lifetime addiction to nicotine. Therefore, restricting the availability of flavored e-liquids will deter youth from initiating e-cigarette use and reduce ongoing e-cigarette use.

According to the U.S. Food and Drug Administration (FDA), the use of e-cigarettes by youth has reached epidemic proportions nationally. Since the New York State Department of Health (Department) began tracking e-cigarette use in New York State (NYS) in 2014, use by youth in high school has increased 160 percent, from 10.5 percent in 2014, to 20.6 percent in 2016, to an astounding 27.4 percent in 2018. The rate for 2018 is equivalent to youth use of combustible cigarettes in 2000 prior to the dramatic decline in the use of combustible cigarettes among NYS youth. Currently, just 4.8 percent of NYS youth smoke a combustible cigarette, one of the lowest rates in the nation. However, the rate of smoking by youth is increasing, as the rate in 2016 was 4.3 percent. Schools across New York State are finding it especially challenging to address the alarming increase in use by adolescents. Enforcement of minimum age statute and prohibitions on school grounds are especially difficult given that most products are sleek and easy to conceal by youth users.

The recently published National Academy of Science, Engineering, and Medicine (NASEM) report on the *Public Health Consequences of E-Cigarettes* concluded that there is:

- 1) “...**substantial evidence** that e-cigarette use increases risk of ever using combustible tobacco cigarettes among youth and young adults,” and
- 2) “...**moderate evidence** that e-cigarette use increases the frequency and intensity of subsequent combustible tobacco cigarette smoking” among youth and young adults.

Given the recent rise in combustible cigarette use by youth and the fact that e-cigarettes are now the most commonly used tobacco product by youth in NYS, evidence exists that use of e-cigarettes could reverse the long-standing decline in combustible cigarette use and reverse the public health benefits that NYS has achieved.

The flavorant chemicals used in e-cigarettes have been approved by the FDA for ingestion only; however, these chemicals have not been approved for inhalation. Because inhalation and ingestion are very different processes, nothing about the approval for ingestion should be interpreted to suggest that these products are safe for inhalation. Food products, chemicals and flavorings that are ingested are detoxified through the liver before entering the circulatory system. Aerosols that are inhaled have a direct impact on lung tissue and directly enter the circulatory system, and are not detoxified through the liver.

Some of the over 15,000 flavors now available include fruit flavors (apple, cherry, peach, melon, strawberry), dessert flavors (vanilla custard, peanut butter cup, cream cookie, milk 'n honey), candy flavors (cinnablaze, bubblerazz, mango burst, caramel). More recently, manufacturers have developed “concept flavors” that may be difficult to perceive as a single distinctive flavor and the product names reflect that (e.g., Jazz, First Flight, and Unicorn Milk) and simple color names (such as Blue and Yellow) that substitute for the names of flavors (Vanilla and Banana respectively). The list of flavors continues to grow. The commonality of all these flavors is that they are distinct from plain tobacco flavor, menthol or unflavored tobacco.

The dramatic increase in use of e-cigarettes by youth is driven in large part by flavored e-liquids, and flavors are a principal reason that youth initiate and maintain e-cigarette use. In a recent survey of adolescent e-cigarette users in NYS, 46.3 percent preferred fruit flavors, followed by mint/menthol (19.9%) and chocolate, candy or other sweets (18.2%). In that same survey, 27.3 percent of adolescent e-cigarette users say that flavors are the reason they currently use e-cigarettes, and for 19.3 percent of adolescent e-cigarette users, flavors were the primary reason for first use. Some flavors also confer misperceptions about the relative safety of e-cigarettes. The survey also found that adolescents are more likely to believe that fruit and

chocolate or other sweet flavors are less harmful than flavors like alcohol, tobacco, and spice flavors.

There is also concern regarding human exposure to nicotine. Users are often unaware of how much nicotine they are consuming. The newest and most popular e-cigarettes deliver high levels of nicotine, the addictive component in all tobacco products.

Nicotine is not a benign chemical. Nicotine has deleterious effects on the developing human brain – a process that continues through the mid-twenties. According to the US Surgeon General, these deleterious effects from nicotine can lead to lower impulse control and mood disorders; disrupt attention and learning among youth and young adults; and prime the developing brain for addiction to alcohol and other drugs.

Adult use of e-cigarettes differs by age category. Adults over age 24 use e-cigarettes at very low rates; just 4.4 percent in 2017. The rate of e-cigarette use among young adults 18 to 24 years of age is about 13 percent. The same proportion of young adults (13%) use combustible cigarettes. Almost 40 percent of the young adult smokers are concurrently using e-cigarettes, known as dual use. The same health concerns described above apply to the use of e-cigarettes by adults aged 18 to 24.

The Department will continue to monitor the impact of new legislation that takes effect on November 13, 2019 that raises the legal age for purchase of e-cigarettes and related products to 21 years to determine the impact that has on youth use rates. In addition, the Department routinely conducts surveys that ask youth, among other things, their preference and current use of flavored products and will monitor the trends with respect to use of menthol, mint and other broad flavoring categories.

In addition, although it is too soon to understand the long-term health effects of a lifetime of e-cigarette use, research is beginning to accumulate about certain health effects related to cardiovascular conditions and respiratory conditions. Some e-cigarette flavors contain diacetyl, the buttery-flavored chemical that is used in foods like popcorn and caramel. When inhaled, diacetyl can cause bronchiolitis obliterans, a scarring of the tiny air sacs in the lungs that is commonly referred to as “popcorn lung,” which is a serious concern that has symptoms that are similar to chronic obstructive pulmonary disease.

The Department will continue to closely monitor the research literature for health impact related to e-cigarettes. Adult smokers who want to continue to use e-cigarettes will have the option of unflavored, menthol or tobacco flavored e-cigarettes.

Costs:**Costs to Private Regulated Parties:**

The regulation will impose costs, in terms of lost sales, for private regulated parties whose primary product line focuses on the sale of e-cigarettes, flavored e-liquids, and related products.

Costs to State Government and Local Government:

State and local governments will incur costs for enforcement. Exact costs cannot be predicted at this time because the extent of the need for enforcement cannot be fully determined. Some of the cost however may be offset by fines and penalties imposed pursuant to the Public Health Law as well as through utilizing State Aid funding.

Local Government Mandates:

The SSC establishes a minimum standard for regulation of health and sanitation. Local governments can, and often do, establish more restrictive requirements that are consistent with the SSC through a local sanitary code. Local governments have the power and duty to enforce the provisions of the State Sanitary Code, including 10 NYCRR Part 9, utilizing both civil and criminal options available.

Paperwork:

The regulation imposes an increase of administrative paperwork for program implementation in regard to developing adequate enforcement mechanisms, record-keeping of enforcement activities and compliance history, and complaint-driven enforcement actions.

Duplication:

There are currently no State or federal regulations regarding the possession, manufacture, distribution, sale or offer for sale of e-cigarettes with characterizing flavors.

Alternatives:

The alternative to the proposed regulation is to wait for the FDA to regulate in this area; however, due to the health concerns associated with increase e-cigarette use among youths, this alternative was rejected.

Federal Standards:

The FDA has not proposed any standards for e-cigarette devices or for the constituents used in the devices to create the aerosol, including characterizing flavors. FDA only requires that those purchasing e-cigarette products be at least 18 years old, that e-liquids carry a warning statement about the addictiveness of nicotine, and that e-liquids be in child-proof containers.

Compliance Schedule:

The regulation will be effective upon publication of a Notice of Adoption in the New York State Register.

Contact Person:

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Albany, New York 12237
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Regulatory Flexibility Analysis for Small Business and Local Governments

Effect of Rule:

The amendment will affect the small businesses that are engaged in selling flavored e-liquids or e-cigarettes. The NYS Vapor Association (<http://nysva.org/>) claims there are at least 700 “vape shops” employing 2700 persons across the state, although the Department cannot confirm this information as no official registration mechanism for “vape shops” currently exists.

Compliance Requirements:

Small businesses must comply with the proposed regulation by not engaging in any possession, manufacturing, distribution, sale, or offer of sale of flavored e-liquids. Local governments must comply by enforcing the proposed regulations as they are part of the State Sanitary Code.

Professional Services:

Small businesses will need no additional professional services to comply.

Compliance Costs:

Costs to Private Regulated Parties:

The regulation will impose costs, in terms of lost sales, for private regulated parties whose primary product line focuses on the sale of e-cigarettes, flavored e-liquids, and related products.

Costs to State Government and Local Government:

State and local governments will incur costs for enforcement. Exact costs cannot be predicted at this time because the extent of the need for enforcement cannot be fully determined. Some of the cost however may be offset by fines and penalties imposed pursuant to the Public Health Law as well as through utilizing State Aid funding.

Economic and Technological Feasibility:

The rule does not impose any economic or technological compliance burdens.

Minimizing Adverse Impact:

The New York State Department of Health will assist local governments by providing consultation, coordination and information and updates on its website.

Small Business and Local Government Participation:

Small business and local governments were not consulted during the creation of this proposed rule; however, small businesses and local governments will be able to submit public comments during the public comment period.

Cure Period:

Violations of this regulation can result in civil and criminal penalties. In light of the magnitude of the public health threat posed by flavored e-liquids, the risk that some small businesses will not comply with the regulations and continue to possess, manufacture, distribute,

sell or offer for sale any flavored e-liquid or product containing the same justifies the absence of a cure period.

Rural Area Flexibility Analysis

Pursuant to Section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas. The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any additional reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

Nature of the Impact:

E-cigarettes and e-liquids are sold in many types of retail outlets. The impact on businesses where e-cigarette sales is not the focus of the business (e.g., convenience store) will have no job impact from this regulation as e-cigarettes make up only a small percentage of their sales. Some e-cigarette retailers focus the bulk of their business on e-cigarettes and e-liquids and these outlets will be affected by this regulation. Although they will still be able to sell e-cigarette devices and unflavored, menthol or tobacco flavored e-liquid, the prohibition on flavored e-liquids is likely to affect these businesses. The Department does not have an accurate estimate of the number of stores affected since the registration requirement for e-cigarette retailers will not be effective until December 1, 2019.

Categories and Numbers Affected:

The main category affected by this regulation is the store that focuses its primary business on the sale of e-cigarette devices and e-liquids. The NYS Vapor Association (<http://nysva.org/>) claims there are at least 700 of such “vape shops” employing 2700 persons across the state, although the Department cannot confirm this information as no official registration mechanism for “vape shops” currently exists. Because of the lack of data about the number of these stores, it is not possible to accurately estimate the number of jobs affected.

Regions of Adverse Impact:

The Department anticipates any jobs or employment impacts will occur equally throughout the regions of the state.

Minimizing Adverse Impact:

The Department will consider different types/levels of enforcement while retailers adapt to the new regulation.

Emergency Justification

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- 3) "...**substantial evidence** that e-cigarette use increases risk of ever using combustible tobacco cigarettes among youth and young adults," and
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Department of Health

ANDREW M. CUOMO
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HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

IMPORTANT NEWS FOR SCHOOLS AND CHILD-CARE FACILITIES

Each year, to comply with New York State Public Health Law (PHL) § 613, schools and child-care centers are required to post information about influenza (flu) and the benefits of flu vaccination at the start of flu season. Flu season begins in early fall and can last through May. **Information must be posted starting now, in “plain view” in your facility where visitors can easily see it.**

To help you comply with this requirement we’re sending a new publication, *Parents: Fight Flu at Home and School*. It is geared to parents and guardians and explains why flu is serious, provides signs and symptoms of the disease, and recommends annual flu vaccination to protect children from flu. Feel free to print and post this publication. It’s available, along with other flu information, for free and in multiple languages here:

- The New York State Department of Health www.health.ny.gov/diseases/communicable/influenza/seasonal/child_care_and_schools/
- Centers for Disease Control and Prevention www.cdc.gov/flu/resources-center/freesources/print/index.htm
- Information specific to New York City Schools is available through the New York City Department of Health and Mental Hygiene here: www1.nyc.gov/site/doh/health/health-topics/flu-seasonal.page

The flu vaccine is the best way to prevent flu, it’s recommended for everyone 6 months of age and older every year. Getting vaccinated can prevent flu-related hospitalizations and deaths in children. The vaccine can also reduce flu illnesses, doctor’s visits, and missed work and school days.

If you have any questions about complying with PHL § 613, please feel free to contact the State Health Department’s Bureau of Immunization at immunize@health.ny.gov, or call (518) 473-4437.

Thank you for helping educate families about flu and the importance of flu vaccination.

September 2019



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

NOTICIAS IMPORTANTES PARA ESCUELAS Y ESTABLECIMIENTOS DE CUIDADO INFANTIL

Cada año, en cumplimiento del artículo § 613 de la Ley de Salud Pública (Public Health Law, PHL) del Estado de Nueva York, se requiere que las escuelas y los establecimientos de cuidado infantil publiquen información sobre la influenza (gripe) y sobre los beneficios de la vacunación contra la gripe al comienzo de la temporada de gripe, que inicia con el otoño y puede durar hasta mayo. **La información debe publicarse ahora, a la vista de todos en su establecimiento, donde los visitantes puedan verla con facilidad.**

Para ayudarles a que cumplan con este requisito, les enviamos una nueva publicación, *Padres: Combatan la gripe en casa y en la escuela (Parents: Fight Flu at Home and School)*. Está dirigida a padres y tutores, explica por qué la gripe es grave, da señales y síntomas de la enfermedad, y recomienda la vacunación anual contra la gripe para proteger a los niños. Pueden imprimir y publicar esta información. Está a su disposición gratis y en múltiples idiomas, junto con más información sobre la gripe, aquí:

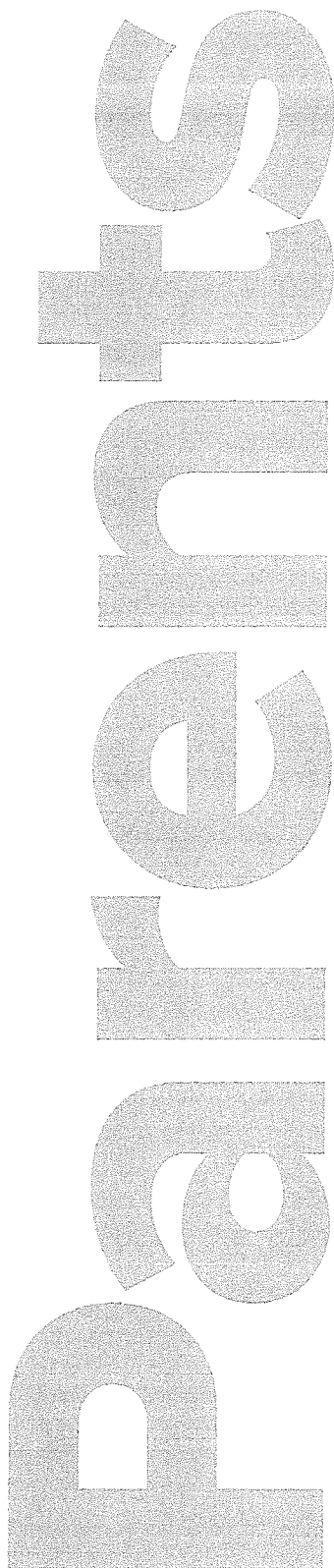
- Departamento de Salud del Estado de Nueva York (New York State Department of Health) www.health.ny.gov/diseases/communicable/influenza/seasonal/child_care_and_schools/
- Centros para el Control y la Prevención de Enfermedades (Centers for Disease Control and Prevention) www.cdc.gov/flu/resources-center/freesources/print/index.htm
- Hay información específica para las escuelas de la Ciudad de Nueva York disponible a través del Departamento de Salud y Salud Mental aquí: www1.nyc.gov/site/doh/health/health-topics/flu-seasonal.page

La vacuna contra la gripe es la mejor manera de prevenir la gripe. Se recomienda su aplicación anual en todas las personas de 6 meses de edad en adelante. La vacunación puede prevenir las hospitalizaciones por causas relacionadas a la gripe y las muertes infantiles. También puede reducir las enfermedades gripales, las consultas médicas y las faltas al trabajo y a la escuela.

Si tienen preguntas sobre el cumplimiento del artículo § 613 de la Ley de Salud Pública, comuníquense con la Oficina de Inmunización (Bureau of Immunization) del Departamento de Salud del Estado: immunize@health.ny.gov, o (518) 473-4437.

Gracias por ayudar a instruir a las familias sobre la gripe y la importancia de la vacunación contra la gripe.

Septiembre de 2019



Fight Flu

at Home and School

Flu, or influenza, spreads easily and can make people very sick, especially kids.

You can help stop flu!

Flu symptoms include:

Fever or chills, body aches, cough, sore throat, headache, runny or stuffy nose, feeling very tired. Some people, especially children, may have stomach problems and diarrhea. Unlike a cold, the flu comes on very suddenly.

Prevent flu!

- Flu vaccine is the best protection against the flu. It is recommended every year for everyone 6 months and older.
- Get the flu vaccine for you and your children every year! It helps make flu sickness milder or prevents it all together.
- Getting the vaccine early in the fall means you and your children will be protected when flu season starts.
- Ask people close to your children, like babysitters and relatives, to get the vaccine, too.
- The vaccine is especially important for people with certain health conditions, like asthma, diabetes, heart or lung conditions because the flu can make them even sicker.

If your child gets the flu:

- Your child will need plenty of rest and lots of fluids.
- Keep your child home from school for at least 24 hours after their fever is gone without using fever-control medicine. This helps avoid giving the flu to others.
- Talk with your child's health care provider before giving a child any over-the-counter medicine.
- Never give your child or teenager aspirin or any medicine that has aspirin in it. Aspirin can cause serious problems.
- If your child gets flu symptoms and is younger than 5 or has a medical condition like asthma, diabetes, or heart or lung disease, call their health care provider. Young children and those with certain medical conditions are at greater risk for getting seriously ill from the flu. Ask their health care provider if they recommend an antiviral drug.
- If you are worried about your child, call their health care provider.

Don't spread flu!

- Wash hands often with soap and water for at least 20 seconds.
- If soap and water aren't handy, use an alcohol-based hand rub.
- Cough or sneeze into a tissue or your elbow, not your hands. Put used tissues in the trash.
- Avoid touching your eyes, nose, and mouth. That's how germs spread.
- Stay away from people who are sick.

health.ny.gov/flu



