



NEW
YORK
STATE

Department
of Health

Emergency Action to Ban the Sale of Flavored E-Cigarettes

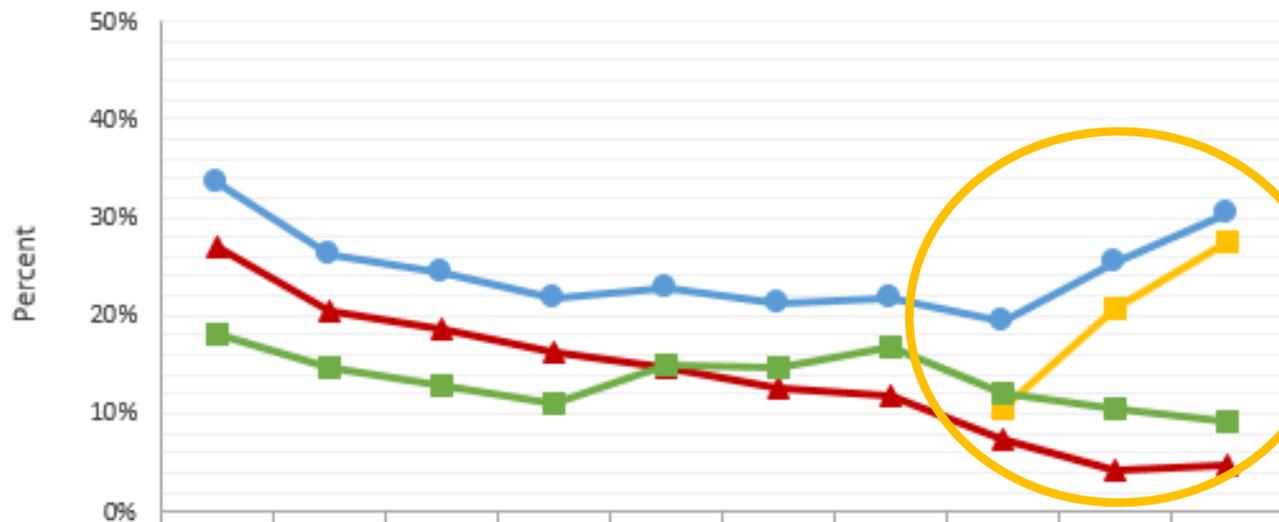


Howard A. Zucker, M.D., J.D.
Commissioner of Health

Youth E-Cigarette Use: An Urgent Public Health Concern

- Nearly 40 percent of 12th grade students and 27 percent of high school students are now using e-cigarettes and this increase is largely driven by flavored e-liquids.
- High school use in 2018 (27.4%) is 160 percent higher than it was in 2014 (10.5%).
- Flavoring is a key youth marketing strategy of the vaping/aerosol industry just as it is in the cigarette, cigar, and smokeless tobacco markets.
- Flavors are a principle marketing strategy that appeals to youth and young adults, and the flavorant chemicals used in e-cigarettes have been approved by the FDA for ingestion but not inhalation.

Trends in Any Tobacco Product Use among High School Students in NYS, 2000-2018



	2000	2002	2004	2006	2008	2010	2012	2014	2016	2018
Any Tobacco Products	33.6%	26.2%	24.3%	21.8%	22.8%	21.2%	21.8%	19.5%	25.4%	30.5%
Cigarettes	27.1%	20.4%	18.5%	16.3%	14.7%	12.6%	11.9%	7.3%	4.3%	4.8%
E-Cigarettes	n/a	10.5%	20.6%	27.4%						
Other Tobacco Products	18.1%	14.6%	13.0%	11.0%	15.0%	14.8%	16.8%	12.0%	10.6%	9.2%



NYS Actions

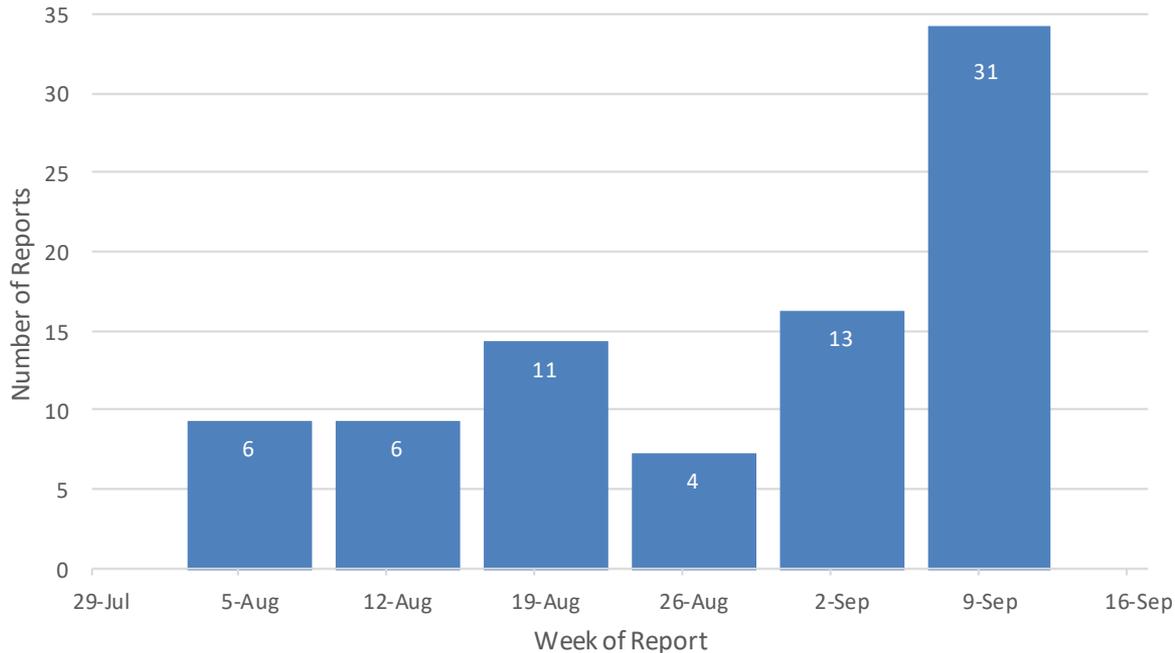
- Ongoing public health investigation with CDC, FDA and other states of vaping-associated pulmonary illnesses
 - Over 380* possible cases in 36 states and 1 US territory
 - 71 reports have been made in NYS (as of 9/14/19)



*The previous US case count was higher because it reported **possible** cases that were **under investigation** by states. The current number includes only confirmed and probable cases reported by states to CDC.

NYS Investigation

Reports to NYS Department of Health
of Vaping-associated Pulmonary Illness



- Patients age in range from 14 – 69
- Majority are less than 21yo (42%)

NYS Actions

- **July 16**
 - Signed legislation to raise the age to purchase tobacco and e-cigarette products from 18 to 21, effective November 13, 2019
- **September 9**
 - Announced emergency regulations requiring entities in NYS that sell vaping products to post signage on the dangers of vaping illegal e-cigarette and e-liquid products
 - Announced subpoenas to three companies that the DOH identified as marketing thickening agents to companies that manufacture vape liquids



NYS Actions

- **September 12**
 - Issued Executive Order directing:
 - State agencies to include e-cigarette prevention within all tobacco prevention and cessation programs and materials
 - DOH to work with SED to develop and deploy e-cigarette prevention measures for schools to include in their curriculums.
 - Signed legislation to expand current school-based programs and marketing campaigns on tobacco prevention to include e-cigarettes



NYS Actions

- **September 15 – Governor Press Conference**

- DOH will hold an emergency meeting with PHHPC to ban e-cigarette flavors
- State Police and DOH will immediately partner to ramp up enforcement efforts against retailers who sell to underage youth
- Governor announced he will advance legislation to ban deceptive marketing of e-cigarettes to teens and children



Ban on Sale of E-Cigarette Flavors

- Data demonstrate the need for urgent action; cannot wait for Legislative session in January or federal action
- New York State is the second state to propose, and the first state to implement, a ban on flavors
- Ban will be effective immediately with a two-week grace period before enforcement begins.
- Adult smokers who want to continue to use e-cigarettes will have the option of unflavored, menthol or tobacco flavored e-cigarettes

Regulatory Process

- **Emergency Regulations**
 - Add a new Subpart 9-3, titled “Prohibition on the Sale of Electronic Liquids with Characterizing Flavors”
 - Section 9-3.1 Definitions
 - Section 9-3.2 Possession, Manufacture, Distribution, Sale or Offer of Sale of Flavored E-Liquid Prohibited.
 - Section 9-3.3 Penalties
 - Section 9-3.4 Severability

Emergency Regulations – Selected Sections

Section 9-3.1 Definitions.

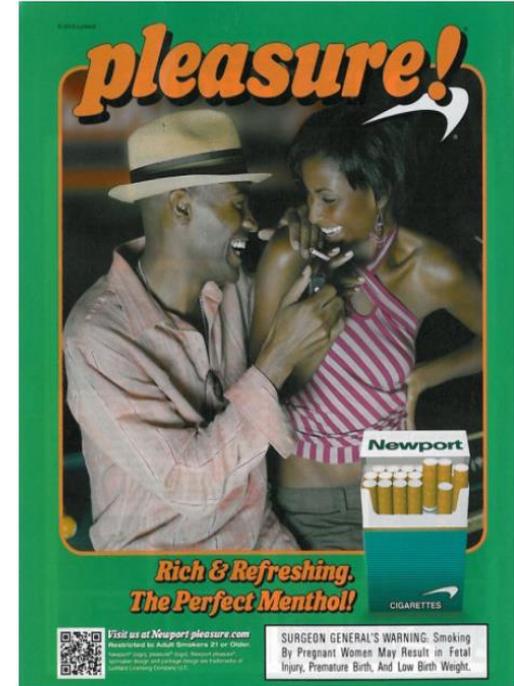
(b) The term “flavored e-liquid” means any e-liquid with a distinguishable taste or aroma, other than the taste or aroma of tobacco or menthol, imparted either prior to or during consumption of an e-cigarette or a component part thereof, including but not limited to tastes or aromas relating to any fruit, 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.

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.

The Question of Menthol

- Since the 1950s, the tobacco industry has targeted African Americans with marketing for menthol combustible cigarettes
- African-American smokers, both adults and youth, overwhelmingly prefer menthol cigarettes
- Studies show significantly reduced rates of quitting among African-American and Hispanic menthol smokers compared with non-menthol smokers
- Questions:
 - Do those who smoke menthol cigarettes quit using menthol e-cigarettes? And,
 - if menthol e-cigarette flavors were no longer available, would they go back to menthol combustible cigarettes?



Newport advertisement in
Essence Magazine, February 2015

Moving Forward

- Adopt emergency regulations now that ban the sale of flavored e-cigarettes other than tobacco and menthol
- Continue to implement the multiple aggressive actions NYS is taking to address the vaping epidemic
- Continue to discuss and research the issue of menthol, and adjust strategy as needed