



Flavored Tobacco and E-Cigarette Guidance for Wholesalers and Distributors

In 2019, the New York City Council enacted Local Law 228 prohibiting the sale of flavored electronic cigarettes (e-cigarettes) and flavored e-liquids of any size or shape. Local Law 228 of 2019 also prohibits the offering for sale or the possession with intent to sell of these items. This law will help protect youth from becoming addicted to e-cigarettes, as many youth find flavored e-cigarette products appealing. In April 2020, the New York State budget law also included a ban on the sale or offering for sale of these items as well as other changes. See Public Health Law §§ 1399-MM-1, 1399-MM-2 and 1399-MM-3.

Wholesalers and distributors play critical roles in assuring that retailers comply with the laws. Compliance helps wholesalers and retailers alike, by minimizing returned shipments and avoiding violations and fines.

Local Law 228 of 2019 adds e-cigarettes and e-liquids (sometimes called liquid nicotine) to the existing City law restricting the sale of flavored tobacco products. In addition to e-cigarettes and e-liquids, products covered include flavored cigars, cigarillos, little cigars, cigar wraps, smokeless tobacco (including chewing tobacco, snuff and dissolvable tobacco products), loose tobacco (including pipe tobacco and roll-your-own tobacco), blunt wraps, snus, and shisha (both tobacco and non-tobacco). Flavors in cigarettes, other than tobacco and menthol, have been prohibited by federal law since 2009. The flavors that are allowed to be sold are different for e-cigarettes and for tobacco products other than cigarettes (other tobacco products or OTP).

As of July 1, 2020, tobacco and e-cigarette retail stores in New York City (NYC) are **only** allowed to sell:

- For those with an e-cigarette license: e-cigarettes or e-liquids/liquid nicotine that are tobacco-flavored or unflavored. This includes all disposable, refillable, and tank-based vaping products.
- For those with a tobacco license: OTP that are tobacco-, menthol-, mint- or wintergreen-flavored or unflavored and cigarettes that are tobacco- or menthol-flavored.

Wholesalers and distributors are advised to know and understand these changes to NYC law, as well as the State's new provisions when processing orders from NYC and elsewhere in New York State. Under the NYC restrictions you must not offer, or accept orders for, any of the above flavored items from retailers in New York City, and you must not sell any of these flavored items to any retailer in NYC. Flavor may be suggested by words, colors, or pictures used in packaging

or marketing. For example, words like “spicy” or “sweet” probably mean the product is flavored. In the coming months, we will provide more guidance on products that are and are not allowed to be sold.

Wholesalers should expect enforcement action, including the impositions of penalties for supplying flavored products to NYC retailers. A licensed wholesaler within NYC may still sell flavored tobacco and vaping products to retailers or other wholesalers who operate in jurisdictions where they are legal.

Because e-cigarettes and e-liquids contain hazardous waste in the form of batteries and nicotine, retailers may not dispose of them in their ordinary waste stream. Wholesalers are encouraged to establish systems for collecting products that are no longer allowed to be sold in NYC.

Learn more about New York State changes at tax.ny.gov/bus. For more information about NYC tobacco and e-cigarette control laws, visit nyc.gov/health and search “tobacco laws” or call **311** and say that you are a retail tobacco or electronic cigarette retail dealer.